A PHILADELPHIA LAWYER IN THE LONDON COURTS

Gift of
Don Juan Riaño y Gayangos

The Corridors of the Courts

A PHILADELPHIA LAWYER IN THE LONDON COURTS

BY

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Illustrated by the Author

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PREFACE

The nucleus of this volume was an address delivered before the Pennsylvania State Bar Association which, finding its way into various newspapers in the United States and England, received a degree of favorable notice that seemed to warrant further pursuit of a subject heretofore apparently overlooked. Successive holiday visits to England were utilized for this purpose.

As our institutions are largely derived from England, it is natural that the discussion of public questions and the glimpses of important trials afforded by the daily papers—usually murder trials or divorce cases—should more or less familiarize Americans with the English point of view in legal matters. American lawyers, indeed, must keep themselves in close touch with the actual decisions which are collected in the reports to be found in every library and which are frequently cited in our courts.

Nothing in print is available, however, from which much can be learned concerning the barristers, the judges, or the solicitors, themselves,

whose labors establish these precedents. They seem to have escaped the anthropologist, so curious about most vertebrates, and they must be studied in their habitat—the Inns of Court, the musty chambers and the courts themselves.

The more these almost unknown creatures are investigated, the more will the pioneer appreciate the difficulty of penetrating the highly specialized professional life of England, of mastering the many peculiar customs and the elaborate etiquette by which it is governed and of reproducing the atmosphere of it all. He will find that he can do little but record his observations.

It was not unknown to him that some lawyers in England are called barristers, some solicitors, and he had a vague impression that the former, only, are advocates, whose functions and activities differ from those of the solicitor; but he was hardly conscious that the two callings are as unlike as those of a physician and an apothecary. It requires personal observation to see that the barristers, belonging to a limited and somewhat aristocratic corps, less than 800 of whom monopolize the litigation of the entire Kingdom, have little in common with the solicitors, scattered all over England. The former are grouped together in their chambers in the Inns, their clients

are solicitors only, they have no contact, perhaps not even an acquaintance, with the actual litigants and a cause to them is like an abstract proposition to be scientifically presented. The solicitors, on the other hand, constitute the men of law-business, whose clients are the public, but who can not themselves appear as advocates and must retain the barristers for that purpose.

Again, it is difficult to grasp fully the influence exercised through life by the barrister's Inn—that curious institution, with its five hundred years of tradition—voluntarily joined by him when a youth; where he has received his training; by which he has been called to the Bar and may be disbarred for cause, and to the Benchers of which Inn he must chiefly look for advancement, although the Lord Chancellor may be the nominal creator of King's Counsel and the donor of judge-ships. The impulse of these Inns is still felt at the American Bar, despite more than a century's separation, for, about the time of the Revolution, over a hundred American law students were in attendance, not only acquiring, for use in the new country, a sound legal training, but absorbing the spirit of the profession which has been transmitted to posterity, although its source may be forgotten.

Nor will anything he has read prepare the American for the abyss which separates the common law barrister, who spends his days in jury trials, from the chancery man, who knows nothing but equity courts; nor for the complete ignorance, if not contempt, with which they seem to regard each other.

K. C.'s, indeed, are afforded their title in the reports—even in the newspapers—but nowhere does it appear that "Leaders" are appointed by the judge of a particular equity court to "take their seats" and practice before him exclusively, being associated in each case with "Juniors," who in turn have "Devils" to prepare their cases; or that a leader may sever this relation and thereafter "go special"; yet all these, and many other peculiar and inviolable customs, are handed down from one generation to another to be followed as if by instinct: and the profession would no more trouble the busy world with such matters than a dog would feel it necessary to explain that he turns thrice before lying down, simply because his wolfish ancestor did so in order to make a bed in the grass.

In this environment of ancient custom, however, the American is surprised to find the most up-to-date courts in the world and an adminis-

tration of law which is so prompt, so colloquial, so simple, so free from formality and so thoroughly in touch with the ordinary man's everyday life, as to provoke a blush for the tribunals of the vaunted New World, still lagging in their archaic conventionality and their diffuse and dilatory methods.

At home, the American has been perplexed by the threadbare assertion that we have as many judges in a large city as has all England, but he shortly learns that such comparison considers only the few judges of the High Court, and ignores the others and the officials performing judicial functions, so numerous that the little Island fairly teems with its justiciary and that the implied criticism is due to ignorance of the facts.

The trials, both civil and criminal, will reveal the complete triumph of common sense and the Englishman will appear at his best in his court, for there he leads the world. The hearty good humor, alacrity and crispness of the proceedings, the absence of declamation but the avoidance of monotony by the proper distribution of emphasis, all combine to delight the practised observer.

The disciplining of the profession by means of

a body to whom may be privately submitted questions of morals and manners, mostly solved by gentle admonition and rarely by severe action, will suggest that our single punishment—disbarment—is so drastic as rarely to be invoked and hence largely fails as a corrective.

From the "bobby" in the street, to the Lord Chancellor on the Woolsack, from a hearing by a registrar to collect a petty debt, to the donning of the black cap in order to sentence a murderer; all will prove suggestive to the alert American who will nevertheless depart with a feeling that, while there is room for improvement at home, yet, upon the whole, there is much of which to be proud in our administration of the sound old law of our ancestors.

The kindly aid of a number of English judges, barristers and solicitors, by way of suggestion and criticism, is gratefully acknowledged.

The occasional illustrations are photographic reproductions of original oil sketches.

Philadelphia, April, 1911.

CONTENTS

CHAPTER		PAGE
I.	First Impressions . . . . . The Law Courts Building on the Strand.—A Court Room.—Participants in a Trial.—Wigs and Gowns.—Colloquial Methods.—Agreeable Voices.—Similarity to American Trials.	1
II.	The Making of Lawyers . . . . Classes from which Barristers and Solicitors are Drawn.—The Inns of Court.—Inns of Chancery.—American Students at Period of Revolution.—A Barrister's Chambers.—Training of Barristers in an Inn.—Being Called to the Bar.—Training of Solicitors.	9
III.	Barristers . . . . . Waiting for Solicitors as Clients. "Devilling."—Juniors.—Conduct of a Trial.—"Taking Silk."—Becoming a K. C.—Active Practice.—The Small Number of Barristers.	29
IV.	Barristers—The Common Law and Chancery Bars . . . . . Bar Divided into Two Parts. No Distinction Between Criminal and Civil Practice.—Leaders.—"Taking His Seat" in a Particular Court.—"Going Special."—List of Specials and Leaders.—Significance of	39

CHAPTER PAGE

Gowns and "Weepers." "Bands."—"Court Coats."—Wigs in the House of Lords.—Barristers' Bags, Blue and Red.

V. Solicitors 49
Line Which Separates Them from the Bar.—Solicitor a Business Man.—Family Solicitors.—Great City Firms of Solicitors.—The Number of Solicitors in England and Wales.—Tendency Toward Abolishing the Distinction Between Barrister and Solicitor.—Solicitors Wear no Distinctive Dress Except in County Courts.—Solicitors' Bags.

VI. Business and Fees 57
Influential Friends of Barrister.—Junior's and Leader's Brief Fees.—Fees of Common Law and Chancery Barristers.—Barrister Partnerships not Allowed.—English Litigation Less Important than American.—Clerks of Barristers and Solicitors Haggle over Fees.—Solicitors' Fees.

VII. Discipline of the Bar and of Solicitors . 67
The General Council of the Bar.—The Statutory Committee of the Incorporated Law Society.—Rulings on Various Matters.—Lapses from Correct Standards.

VIII. The Civil Courts 87
The General System.—Different Courts.—Rules of Practice Made by Lord Chancellor.—Juries, Common and Special.—Judges and How Appointed.—Judges' Pay.—Costs. Court Notes.—Some Differences in English and American Methods.

CHAPTER PAGE

IX. Courts of Appeal 107
The Court of Appeal.—House of Lords.—Divisional Court.—Judicial Committee of the Privy Council.

X. Masters—the Time Savers 117
Current Hearings.—Minor Issues Threshed out.

XI. The Police Courts 125
Current Hearings.

XII. The Central Criminal Court—The Old Bailey 131
Current Trials

XIII. An Important Murder Trial . . . 145

XIV. Litigation Arising Outside of London . 169
Local Solicitors.—Solicitors' "Agency Business."—The Circuits and Assizes.—Local Barristers.—The County Courts.—The Registrar's Court.

XV. General Observations and Conclusion . 177

Index 195

ILLUSTRATIONS

The Corridors of the Courts	*Frontispiece*
	FACING PAGE
Crossing the Strand from Temple to Court	36
A Jury Trial	100
A Subject for the Police Court	128
The Sentencing of Dhingra	156
Sidewalk Socialism—Hyde Park	178

A PHILADELPHIA LAWYER IN THE LONDON COURTS

CHAPTER I

FIRST IMPRESSIONS

THE LAW COURTS BUILDING ON THE STRAND —A COURT ROOM—PARTICIPANTS IN A TRIAL—WIGS AND GOWNS—COLLOQUIAL METHODS—AGREEABLE VOICES—SIMILARITY TO AMERICAN TRIALS.

Leaving the busy Strand at Temple Bar and entering the Law Courts Building, one plunges into that teeming hive where the disputes of millions of British subjects are settled by law. Here the whole kingdom begins and ends its legal battles—except the cases on circuit, those minor matters which go to the County Courts, and the very few which reach the House of Lords.

The visitor, strolling through the lofty Gothic hall and ascending one of the stair-cases to the second floor, finds himself in a long, vaulted corridor, sombre and quiet, which runs around the building. There are no idle crowds and there is no smoking, but, curiously enough, frequent re-

freshment bars occupy corners, where drink as well as food is dispensed by vivacious bar-maids.* Here and there, a uniformed officer guards a curtained door through which may be had a glimpse of a court room; but no sound escapes, because of a second door of glass, also draped with curtains. Groups of litigants and witnesses await their turns or emerge with flushed faces and discuss their recent experiences before returning to the roar of London. Barristers pace up and down in wig and gown, or retire to a window-seat for conference with their respective solicitors.

A mere sight-seer, having thus visited the courts, passes on his way, but as the administration of law, from the Lord Chancellor to the "bobby," is the thing best done in England and commands the admiration and imitation of the world, the courts deserve more than a casual visit.

Passing the officer and the double-curtained doors, one enters the court-room, which is usually small and lofty, with gray stone walls panelled in oak, subdued in color and well lighted from above. The admirable arrangement of seats sloping steeply upward on all sides, in-

*Very recently these bars have been moved to restaurants on the lower floor.

stead of resting upon a level floor, brings the heads of speakers and auditors near together; and the bright colors of the judges' robes—scarlet with a blue sash over the shoulder in the case of the Lord Chief Justice, and blue with a scarlet sash in the case of most of the others, together with various modifications of broad yellow cuffs—first strike the eye.

The judge's bewigged head, as he sits behind his desk, is about twelve feet above the floor. On his left, at the same level, stands the witness, who has reached the box by a small stairway. At the judge's right are the jury, seated in a box of either two rows of six or three rows of four, the back row being nearly on a level with the judge. In front of the judge, but so much lower as to oblige him to stand on his chair when whispering to his lordship, sits his "associate," a barrister in wig and gown, whom we should designate as the clerk of the court.

Facing the associate is the "solicitors' well," at the floor level, where, on the front row of benches, sit the solicitors in ordinary street dress. Then come the barristers—all in wig and gown—seated on wooden benches, each row with a narrow desk which forms the back of the seat in front. The desks are supplied with ink wells,

and with the inevitable quill pen. The barristers keep their places until their cases are reached and then try them from the same seats, so that there is always a considerable professional audience. For the public there is little accommodation—usually only a few benches back of the barristers and a meagre gallery above.

The solicitor, whose client may be the plaintiff or the defendant, has prepared the case and knows its ins and outs as well as the personal peculiarities of the parties and witnesses who will be called, but he is unable to take any part in the trial and can only whisper an occasional suggestion to the barristers he has retained, by craning his neck backward to the leader behind him. This leader is a newcomer into the case. He is a K. C. (King's Counsel) who has been "retained" by the solicitor upon payment of a guinea followed by a large "agreed fee," and he leaves the "opening of the pleadings" to the junior immediately back of him, while the latter, in turn, has handed over the preparation to his "devil" who is seated behind him.

Thus, the four men engaged on a side, instead of being grouped around a counsel table, as in America, are seated one in front of the other at different levels, rendering a general consul-

tation difficult when questions suddenly arise. The two men on each side of the case who know most about it have no voice in court, for the devil is necessarily as mum as the solicitor, and the name of the former does not even appear in the subsequent report of the trial. How this comes about requires some acquaintance with the different fields of activity of barristers and solicitors, which will be referred to later.

In thus glancing at an English court, an American's attention is sure to be arrested by the wig. The barrister's wig, for his ordinary practice in the High Court, has a mass of white hair standing straight up from the forehead, as a German brushes his; above the ears are three horizontal, stiff curls, and, back of the ears, four more, while behind there are five, finished by the queue which is divided into tails, reaching below the collar of the gown. There are bright, shiny, well-curled wigs; wigs old, musty, tangled and out of curl; some are worn jauntily, producing a smart and sporty effect, others look like extinguishers. So grotesque is the effect that it is difficult to realize that these men are not mummers in some pageant of modern London, but that they are serious participants in grave proceedings.

Not only the eye, but the ear will convey novel and favorable impressions to the observer. He will be struck by the cheerful alacrity and promptness of the witnesses, by the quickness and fulness of their responses, by a certain atmosphere of complete understanding between court, counsel, witnesses and jury, and more than all, by the marked courtesy, combined with an absence of all restraint, and a perfectly colloquial and good-humored interchange of thought. It is hard to define this, but it certainly differs from the air of an American tribunal where the participants seem almost sulky by comparison. The Englishman in his court is evidently in his native element and appears at his best.

The voices, too, are most agreeable, although many barristers acquire the high-pitched, thin tone usually associated with literary and ecclesiastical surroundings. Besides superior modulation, the chief merit is in the admirable distribution of emphasis. In this respect both the dialogue and monologue in an English court room are far less monotonous than in an American.

Passing the superficial impression and coming to the underlying substance, there is extraordinarily little difference between law courts on

both sides of the Atlantic. Not only is the common law the same, and the legislation of the two countries largely parallel, but the method of law-thought—the manner of approaching the consideration of questions—is precisely identical, so that, upon the whole, the diversity is no greater than that which may exist between any two of the forty-six states. Indeed, so complete is the similarity that an American lawyer feels that he might step into the barristers' benches and conduct a current case without causing the slightest hitch in the proceedings, provided he could manage the wig and that the difference of accent—not very marked in men of the profession—should not attract too much attention.

That the law emanating from the little Island, which could be tucked away in a corner of some of our States, should have spread over the vast territory of America and control such an enormous population with its many foreign strains, and that, as the decades roll on, it should thrive, improve, and successfully grapple with problems never dreamed of in its origin, indicates its surprising vitality and stimulates interest in the methods now in vogue in its native land.

CHAPTER II

THE MAKING OF LAWYERS

CLASSES FROM WHICH BARRISTERS AND SOLICITORS ARE DRAWN—THE INNS OF COURT — INNS OF CHANCERY — STUDENTS AT PERIOD OF REVOLUTION—A BARRISTER'S CHAMBERS—TRAINING OF BARRISTERS IN AN INN—BEING CALLED TO THE BAR—TRAINING OF SOLICITORS.

To young Englishmen possessing neither fortune nor influence, the profession of the law has long been an open road to advancement in a country notable for orderly and constitutional methods, where the ultimate appeal is always to reason. Perhaps the worship of money, which characterizes modern England, has somewhat lessened the prestige of success at the Bar there, as it has done in America, where a millionaire, upon urging his son to enter the profession, was met by the young hopeful's reply: "Pooh, father, *we* can hire lawyers." Nevertheless, the law still draws its recruits from the flower of the youth of both countries and, in England, it appeals to two types of men: to those who would become barris-

ters, and to those whose ambition soars no higher than the solicitor's calling; moreover the classes from which the candidates are generally drawn, differ as do their training and the future functions.

Traditionally, indeed, the sons of gentlemen and the younger sons of peers were restricted, when seeking an occupation, to the Army, the Navy, the Church and the Bar. They never became solicitors, for that branch, like the profession of medicine, was somewhat arbitrarily excluded from possible callings, but this tradition, as is the case with many others, has been gradually losing its force of late years. It must always have been a little hazy in its application, owing to the difficulty of ascertaining accurately the status of the parent, if not a peer; and Sir Thomas Smith who, more than three centuries ago, after describing the various higher titles, attempted a definition of the word "gentleman," could formulate nothing more definite than the following: "As for gentlemen they be made good cheap in this kingdom; for whosoever studieth the laws of the realm, who studieth in the universities, who professeth the liberal sciences, and, to be short, who can live idly and without manual labor, and will bear the port,

charge and countenance of a gentleman, he shall be called master and shall be taken for a gentleman." The ancient books, too, afford a glimpse of a struggle on the part of the Bar to demand a certain aristocratic deference, for an old case is reported where the court refused to hear an affidavit because a barrister named in it was not called an "Esquire."

That the struggle was not in vain, is evidenced by the reply of an old-time Lord Chancellor, who, when asked how he made his selection from the ranks of the barristers when obliged to name a new judge, answered: "I always appoint a gentleman and if he knows a little law, so much the better."

Naturally, the solicitor (who was formerly styled an attorney, except when practicing in an equity court) was sensitive about his own position, for the passage of a now-forgotten Act of Parliament was once procured, decreeing that attorneys should thereafter be denominated as "gentlemen."

But times have changed in the law, as in other fields of activity, and sons of good families, as well as those of less degree, now enter both branches of the profession. Hence, representatives of the best names in England are to be

found on the barristers' benches side by side with self-made men, some of whom have become ornaments of the Bar, and with men of divers races, such as swarthy East Indians, and Dutch South Africans. One or two barristers may even be found, who, although members of the Bar and necessarily of one of the Inns, nevertheless, remain, as born, American citizens. The Bar, in short, although a jealously close and exclusive organization, has become a less aristocratic body and is now a real republic where brains and character count.

The same diversity of origin exists amongst the solicitors, for, as has been stated, they are now, in part, recruited from those who formerly would have condescended to nothing less than the Bar. A constant improvement in training, too, in the promulgation of rules of professional conduct, in the enforcement of a firm discipline and in the nursing of traditions, all tend to raise and maintain a higher standard and a better tone than formerly existed in the ranks of the solicitors. Thus, the modern tendency is that there should be less difference in the personnel of those entering either branch of the profession.

Candidates for the Bar are mostly University men, more mature in years, perhaps, than our

graduates—for boys commence and end their college courses late in England—and they are, as a rule, more broadly cultivated than those who intend to become solicitors. Some, indeed, take a full course of theoretical law at Oxford or Cambridge before beginning practical training as a student in one of the Inns of Court, which are peculiarly British institutions, having no counterpart elsewhere.

Physically, an Inn of Court is not a single edifice, nor even an enclosure. It is rather an ill-defined district in which graceful but dingy buildings of diverse pattern and of various degrees of antiquity, are closely grouped together and through which wind crooked lanes, mostly closed to traffic, but available for pedestrians. Unexpected open squares, refreshed by fountains, delight the eye, the whole affording the most peaceful quietude, despite the nearness of the roar of surrounding London. The four Inns of Court (as distinguished from the Inns of Chancery and Serjeants' Inn, all of which are now obsolete) are, the Middle Temple, the Inner Temple, Lincoln's Inn and Gray's Inn, but the last is of minor importance in these modern days, having fallen out of fashion.

The Middle Temple and the Inner Temple

acquired, by lease in the XIV Century, and by actual purchase in 1609, the lands of the Knights Templar, consisting of many broad acres situated on the south side of the Strand and Fleet Street, opposite the present Law Courts Building, and the whole space is now occupied by an intricate mass of structures—the great Halls, the Libraries, the quaint barristers' chambers—and by the beautiful Temple Gardens, sloping to the Thames, adorned with bright flowers and shaded by fine trees. There is no line of demarcation between the two Temples—one simply melts into the other. They own in common the Temple Church, part of which dates from 1185, with its recumbent black marble figures of Knights in full armor and, in the churchyard, its tomb of Oliver Goldsmith.

The wonderful Hall of the Middle Temple, where the benchers, barristers and students still eat their stated dinners, was built about 1572, and is celebrated for its interior, especially for the open-work ceiling of ancient oak. Shakespeare's comedy, Twelfth Night, was performed in the Hall in 1601, and it is believed that one of the actors was the author himself. The Library is a great one, but an American

lawyer may be surprised at the incompleteness of the collection of American authorities. The Hall of the Inner Temple, on the other hand, is quite modern, although most imposing and in the best of taste.

Lincoln's Inn became possessed about 1312 of what was once the country-seat of the Earl of Lincoln, which, running along Chancery Lane, adjoins the modern Law Courts Building on the north and consists of two large, open squares surrounded by rows of ancient dwellings, long since converted into barristers' chambers, and shady walks leading to a fine Hall of no great antiquity, however. An old gateway, with the arms of the Lincolns and a date, A. D. 1518, is considered a good example of red brick-work of a Gothic type—probably the only one left in London. The Library, which has been growing for over four hundred years, contains the most complete collection of books upon law and kindred subjects in England, numbering upward of 40,000 volumes.

These three Inns of Court are the active institutions; the fourth, Gray's Inn, which probably took its name from the Greys of Wilton who formerly owned its site, has long since ceased to be of much importance, although the

old Hall and the classic architecture of some of the Chambers, still attracts the eye. It happens, however, that a Philadelphia student, who attended this ancient Inn nearly two hundred years ago, was responsible for the phrase still proverbial on both sides of the Atlantic, "that's a case for a Philadelphia lawyer." The unpopular Royal judges of the Province of New York had, in 1734, indicted a newspaper publisher for libel in criticising the court and they threatened to disbar any lawyer of the Province who might venture to defend him. But, from the then distant little town on the Delaware, the former student of Gray's Inn, although an old man at the time, journeyed to Albany and, by his skill and vehemence, actually procured a verdict of acquittal from the jury under the very noses of the obnoxious court; the fame of which achievement spread throughout not only the Colonies but the mother-country itself.

Names great in the law, in literature, in statecraft and in war are linked with each of these venerable establishments, to record which would mean to review much of the history of England as well as of America; for, besides the early Colonial students, a large number were entered in the different Inns during the period immedi-

ately preceding the Revolution. Of these, South Carolina sent forty-seven, Virginia twenty-one, Maryland sixteen, Pennsylvania eleven, New York five and New England two. The names of many of them are later to be found amongst the leaders of the Bar of the new country, on the bench as Chief Justices and even as signers of the Declaration of Independence.

The Halls of the Inns were once the scenes of masques and revels, triumphs and other mad orgies, in which the benchers, barristers and students took part; including, as mentioned, the production of Shakespeare's plays during his lifetime.

In these halls also occur the stated dinners —to which, in the Temple, at least, the porter's horn still summons. The members and students of the Inn, arrayed in gowns, attend in procession and, entering the hall, seat themselves on long benches before oaken tables; the governing body—the benchers—being placed at one end where the floor is elevated. It is pleasant to record that, during the last year or two, the daily contact of the barrister with his Inn has been increased by the innovation of a luncheon which is served in the hall at the hour when the courts take a recess. On this occasion the most

noted English advocates may be seen, strolling in without removing their silk hats, sometimes without even having dispensed with wig and gown, when, seating themselves on the uncompromising oak, they call for a chop and beer and relax into jolly sociability.

At one time barristers actually lived in the Inns of Court, but this practically ceased about the time of the reign of Elizabeth. All of them now have their "chambers" in the obsolete little dwelling houses, facing upon the open squares or narrow lanes of the Inns, which are merely offices, but very unlike those of an American lawyer in one of our "skyscrapers."

Entering the front door by a low step, or climbing two or three flights of a rickety staircase in one of these houses, the visitor finds a door on which, or on a tin sign, are painted the names of one or more gentlemen, without stating their occupations, which would be superfluous in this small world of barristers. A summons by means of the old iron knocker, discloses the barrister's clerk, whose habitat is an outer room, and whose business it is to receive visitors—perchance the clerks of solicitors with briefs and fees.

Ushered into the barrister's sanctum, one finds

a meagrely furnished room, the walls masked with rows of books, the table, chairs and window-sills littered with papers. Amidst all this, a modern telephone looks quite out of place, and the American tries to avoid detection when his eye unconsciously steals to a wig hanging on a hook back of the barrister's chair and to a round tin box, lying on the floor, which is for the transportation of the tonsorial armor when its owner travels on circuit. The otherwise uninviting aspect of the place is redeemed, however, by a cheerful fire blazing on the hearth and by a restful outlook upon a shady garden, and a splashing fountain, where the sparrows sip the water and take their dainty baths. Here the barrister remains when not in court; but when the day's work is done, if he be prosperous, his motor car whisks him to the more elegant surroundings of a home in the West End, or, perhaps a humble bus and suburban train carry him far from town.

The Inns of Court began their existence about 1400, nearly cotemporaneously with the Trade Guilds, and both, doubtless, took their rise from the instinct of men engaged in a common occupation to combine for mutual protection. All lawyers were once men in holy orders and the

judges were bishops, abbots and other Church dignitaries, but in the XIII Century the clergy were forbidden to act in the courts and, thereupon, the students of the law gathered together and formed the Inns. Much concerning their origin is obscure, but the nucleus of each was doubtless the gravitation of scholars to some ancient hostelry, there to profit by the teachings of a master lawyer of the day—just as the modern London club had its beginning in the convivialities of a casual coffee house. In time these loose aggregations developed into strong and elaborate organizations which acquired extensive real property, now of enormous value, and have long wielded a powerful influence.

In order to enjoy the quiet of what was then the country, and yet to retain the advantage of the city's protection at a time when rural localities were far from safe, the Inns were mostly located close to the west wall of the City, although the Inner Temple, as its name implies, is just within the line of that vanished wall, and thus they were convenient to Westminster, where the courts were permanently located by a provision of Magna Charta. During the present generation, however, the principal courts (except the House of Lords and the Judicial Com-

mittee of the Privy Council) have returned to a situation actually contiguous to the old Inns, whilst the vast town, during the centuries, has not only engulfed Westminster but has spread miles beyond it. Thus, all the Inns were grouped in a section, perhaps a square mile in extent, bounded on the east by Chancery Lane, which roughly follows the old City wall and between the Thames on the south, and the district called Holborn on the north.

Looking now to the functions of these ancient institutions, an Inn of Court may be defined as an unincorporated society of barristers, which, originating about the end of the XIII Century, possesses by immemorial custom the exclusive privilege of calling candidates to the Bar, and of disciplining, or when necessary, of disbarring barristers.

The governing body is composed of the benchers, who are self-chosen and unlimited in number, but it is usual to invite a barrister to join the benchers of his Inn upon his being made a King's Counsel, which honor will be referred to later. The executive officer is the treasurer, who is selected annually, and the members consist of the barristers and students.

All the Inns are alike in authority, in pres-

tige and in the privileges which they enjoy and the regulations of each, governing the admission, education and examination of students and the calling to the Bar of those who are qualified, are precisely uniform; any differences which may have existed having been abolished by the adoption in 1875 of a code of rules known as the "Consolidated Regulations." While there is thus complete equality and no official precedence, yet each Inn has its own history, traditions and ancient customs. The choice of which Inn to enter, thus becomes a matter of individual preference, depending upon sentiment, or upon family or social surroundings.

The former Inns of Chancery should also be mentioned before leaving the subject, although they have no present interest for the modern lawyer. Their origin, too, is buried in obscurity, but they arose about the same time as the Inns of Court, with one of which each was connected, and were at first places of preparatory training for young students later to be admitted to the particular Inn. These youthful apprentices, however, were gradually ousted by the attorneys and solicitors—who have always been excluded from the Inns of Court—whereupon the Inns of Chancery fell out of fashion and de-

teriorated, so that by the middle of the Eighteenth Century they had disappeared and their names are now mere memories. During the period of activity of the Inns of Chancery, Staple Inn (perhaps the best known) and Barnard's Inn, were attached to Gray's Inn; Clifford's Inn, Clement's Inn and Lyon's Inn were intimately related to the Inner Temple; Furnival's Inn and Thavie's Inn to Lincoln's Inn; the New Inn and Strand Inn to the Middle Temple. One block only of quaint Elizabethan buildings, with gables of cross timber and plaster, still overhangs the great thoroughfare of Holborn and marks what is left of Staple Inn.

Likewise Serjeants' Inn vanished in 1876, when its valuable realty was sold—for Serjeants-at-law had long ceased to be created—and the proceeds were divided amongst the few survivors; a proceeding much criticized at the time, although one of them gave his share to charity. The serjeants-at-law were once a class of barristers who had in some manner acquired the exclusive right of audience in the Court of Common Pleas and had also secured a monopoly of the then profitable art of pleading. Upon attaining this degree, a serjeant severed his relations with his Inn of Court and attached him-

self to the Serjeants' Inn. After having occupied several sites since the Sixteenth Century, Serjeants' Inn was finally located on Chancery Lane, and to it belonged all of the serjeants, as well as all of the judges of the courts, for they, necessarily, had been serjeants before being elevated to the bench. The buildings, which are small and have no pretensions to architectural beauty, have for many years been occupied as offices, chiefly those of solicitors.

Thus, of the many Inns of Chancery, of the Serjeants' Inn (and the once powerful societies which they housed), there remain none but the four great Inns of Court, through one of which must pass every barrister called to the English Bar.

This brief sketch may convey some idea of the extent to which the young law student unconsciously absorbs tradition, and is moulded, when plastic, by the pressure of centuries of custom and etiquette. Whatever may have been his forebears, he is more than likely, when turned out as a full-fledged barrister, to answer pretty nearly to the old definition, for he has, indeed, been one "who studieth the laws of the realm" and he is apt to "bear the port, charge and countenance of a gentleman."

To the embryo barrister, however, the existing Inns possess interests far livelier than those referred to, for he must enter one of them, and not only thus gain access to the Bar; but must ally himself to his choice for the balance of his life, and look to it chiefly for future advancement. Formerly he had only to attend a single function—a dinner—during each term and, having "eaten twelve dinners," he, ipso facto, became entitled to be called to the Bar, no matter how inadequate might be his knowledge of the law. In these less aristocratic and more prosaic days, however, he is obliged diligently to apply himself to study, and to pass, from time to time, regular and strict examinations, prescribed by the Council of Legal Education, so that his equipment is no longer left to chance, but is really measured with cold accuracy. The term of study is not less than three years, and twelve terms, four in each year, must be "kept" at the Inn, the evidence of which is still the fact of dining in the hall six days during each term, although members of the Universities of Oxford and Cambridge need dine but three days in each term.

An English student's reading is much like that pursued in one of our own law schools, the

chief difference being that he devotes more time to mastering general principles than to the consideration of reported cases from which our students are presumed to extract the underlying principle. Much has been said in favor of each method, and the true course probably lies between the extremes, but the average result of an English law training, superimposed upon a generally superior prior education, is perhaps somewhat better than the average American result, while, as to the few on both sides of the water destined to attain real eminence, no superiority could fairly be claimed by either.

The total fees payable by a student amount to about £140. and women, be it observed by progressive ladies, are not eligible for the Bar in England.

Having passed the necessary examinations, the young barrister is finally "called to the Bar," a ceremony which consists in his attending court on a certain day where, seated with other neophytes, he is addressed by the judge (who has, of course, been posted in advance), as follows: "Does Mr. —— move?" To this the young barrister bashfully assents, though naturally he has no real motion to make. By this brief colloquy he has at once been translated

from the student to the barrister. Long ago, when the Bar was limited and the business was small, it had become the custom, upon motion days, for the court to call upon the different barristers, in the order of their seniority at the Bar, for such motions as their cases required; and hence the present ceremony of calling to the Bar has survived, and it is predicated upon imaginary preceding invitations to seniors to make their motions.

Solicitors are created by entirely different methods, as there are no Inns nor any similar organizations for students. There is a preliminary examination to determine whether the boy who desires to become a solicitor, has sufficient general education. If so, he is apprenticed, for a period of five years, to some practitioner, for which privilege he pays a sum of money, say from 100 to 400 guineas; the amount actually depending upon the solicitor's standing and the affluence of the boy's family. There are official fees, too, amounting to about £130. so that, as he receives no compensation during his five years' apprenticeship, and meantime must be supported by his people, the cost of entering the solicitor's calling is not inconsiderable. He begins by copying papers and performing minor

services in the public offices and, at the same time, pursues his legal studies, which have steadily become more arduous. His progress as a law student is ascertained by an intermediate examination, held under the direction of the Solicitors' Incorporated Law Society, and a final one determines whether he has acquired sufficient knowledge of the law to be admitted to practice. If shown to be qualified, he is admitted by the courts, and is thereafter subject to the discipline of the Society and to that of the courts themselves, usually prompted by the Society. The marked difference, therefore, that distinguishes the solicitor's training from that of the barrister, is the absence of any Inn of Court —with its *esprit de corps*—as a commanding influence in shaping his development and governing his whole career. Nevertheless, while the whole body of solicitors is, perhaps, not as liberally educated nor as polished as the Bar, the higher grade of solicitors are lawyers quite as well equipped, and gentlemen equally accomplished, as members of the Bar itself.

Some glimpses of the separate roads which the barrister and the solicitor travel after their student days, will be reserved for later chapters.

CHAPTER III

BARRISTERS

WAITING FOR SOLICITORS AS CLIENTS—"DEVILLING"—JUNIORS—CONDUCT OF A TRIAL—"TAKING SILK"—BECOMING A K. C.—ACTIVE PRACTICE—THE SMALL NUMBER OF BARRISTERS.

Having been called to the Bar, the question first confronting the young barrister is whether he really intends to practice. He may have read law as an education, meaning to devote himself to literature, to politics or to some other pursuit, or he may have embraced the profession in deference to the wishes of his family and to fill in the time while awaiting the inheritance of property. Supposing him, however, to be one of the minority determined to rise in the profession, he is confronted with formidable obstacles, for he can not look to his friends to furnish him with briefs. He can never be consulted nor retained by the litigants themselves. The only clients he can ever have are solicitors, whose clients, in turn, are the public. He never goes beyond his

dingy chambers in the Inns of Court, where, guarded by his clerk, he either wearily waits for solicitors with briefs and fees, or, more likely still, gives it up and goes fishing, shooting or hunting. And this furnishes the market for the alluring placards one sees at the old wig-makers' shops in the Inns of Court: "Name up and letters forwarded for £5 per annum."

The early ambition of the young barrister is to become a "devil" to some junior barrister, who always has recourse to such an understudy, and, if the junior is making over £1,000 a year, he continuously employs the same devil. This term is not applied in a jocular sense, but is the regular and serious appellation of a young barrister who, in wig and gown, thus serves without compensation and without fame—for his name never appears—often for from five to seven years. The devil studies the case, sees the witnesses, looks up the law and generally masters all the details, in order to supply the junior with ammunition.

Before the trial the junior has one or more "conferences" with the solicitor, all paid for at so many guineas; occasionally he even sees the party he is to represent, and, more rarely, an important witness or two. The devil is some-

times present, although his existence is, as a rule, decorously concealed from the solicitor.

If the solicitor, or the litigating party, grows nervous, or hears that the other side has employed more distinguished counsel, the solicitor retains a K. C. as leader. Then a "consultation" ensues at the leader's chambers between the leader, junior, solicitor, and, occasionally, the devil.

At the trial, the junior merely "opens the pleadings" by stating in the fewest possible words, what the action is about—that it is, perhaps, a suit for breach of promise of marriage between Smith and Jones, or to recover upon an insurance policy for a loss by fire—and then resumes his seat, whereupon the leader—the great K. C. —really opens the case, at considerable length and with much more detail and argument than would be good form in an American court. He states his side's contention with particularity, reads documents and correspondence (none of which have to be proved unless their authenticity is disputed—points which the solicitors have long ago threshed out) and he even indicates the position of the other side, while, at the same time, arguing its fallacy. Having done this, he leaves it to the junior to call the witnesses—more of-

ten he departs from the court room to begin another case elsewhere, and returns only to cross-examine an important witness on the other side, or to make the closing speech to the jury. In this way a busy leader may have several trials going on at once. The junior then proceeds to examine the witnesses with the help of an occasional whispered suggestion from the solicitor, who is more than ever isolated by the departure of the leader, and the devil is proud when the junior audibly refers to him for some detail.

If the leader is absent, which frequently happens notwithstanding his fee has been paid, inasmuch as no case is deferred by reason of counsel's absence, the junior takes his place, while the solicitor grumbles and more devolves upon the devil.

Occasionally, indeed, both leader and junior may be elsewhere and then is the glorious opportunity of the poor devil, who hungers for such an accident, for he may open, examine, and cross-examine, and, if neither his junior nor his august leader appear, he may even close to the jury. The solicitor will be white with rage and chagrin, wondering how he shall explain to the litigant the absence of the counsel whose fees he has paid, but the devil may win and so

please the solicitor that the next time he may himself be briefed as junior. This is one of the things he has read of in the Lives of the Lord Chancellors.

The devil is in no sense an employee or personal associate of the junior—which might look like partnership, a thing too abhorrent to be permitted. On the contrary, he often has his own chambers and may, at any time, be himself retained as a junior, in which event his business takes precedence of his duties as a devil, and he then describes himself as being "on his own."

Having gained some identity, and more or less business "on his own" from the solicitors, a devil gradually begins to shine as a junior, whereupon appears his own satellite in the person of a younger man as devil, while the junior becomes more and more absorbed in the engrossing but ever fascinating activities of regular practice at the Bar.

Reaching a certain degree of prominence, a junior at the common-law Bar may next "take silk;" that is, become a K. C., or King's Counsel, which has its counterpart at the Chancery Bar in becoming a "leader," as will be explained later when dealing with the division between the law

and equity sides of the system. Whether a barrister shall "apply" for silk is optional with himself and the distinction is granted by the Lord Chancellor, at his discretion, to a limited, but not numerically defined, number of distinguished barristers. The phrase is derived from the fact that the K. C.'s gown is made of silk instead of "stuff," or cotton. It has also a broad collar, whereas the stuff gown is suspended from shoulder to shoulder.

Whether or not to "take silk," or to become a "leader," is a critical question in the career of any successful common law or chancery barrister. As a junior, he has acquired a paying practice, as his fee is always two-thirds that of the leader. He has also a comfortable chamber practice in giving opinions, drawing pleadings and the like, but all this must be abandoned—because the etiquette of the Bar does not permit a K. C. or leader to do a junior's work—and he must thereafter hazard the fitful fancy of the solicitors when selecting counsel in important causes. Some have taken silk to their sorrow, and many strong men remain juniors all their lives, trying cases with K. C.'s and leaders much younger than themselves.

They tell this story in London: A certain

Scotch law reporter (recently dead), noted for his shrewdness and good judgment, having been consulted by a barrister whether to "apply for silk," advised him in the negative, but declined to go into particulars. The barrister renewed his inquiry more than once, finally demanding the Scot's reason for his advice. The latter reluctantly explained that the barrister had a good living practice which he would be foolish to give up. Being further pressed, he finally said: "In many years' observation of the Bar I have learned that success is only possible with one or more of three qualifications, that is, a commanding person, a fine voice, or great ability, and I rate their importance in the order named. Now, with your wretched physique, penny-trumpet voice, and mediocre capacity, I think you would surely starve to death." The barrister did not "apply," but never spoke to the Scotchman again.

The anecdote illustrates the crucial nature of the step when taken by any barrister, and even if taken with success, yet there are waves of popularity affecting a leader's vogue. Solicitors get vague notions that the sun of a given K. C. is rising or setting—that the judges are looking at him more kindly or less so, therefore K. C.'s and leaders who were once overwhelmed with busi-

ness, may sometimes be seen on the front row with few briefs.

A successful K. C. leads a strenuous life, as may well be appreciated if he be so good as to take his American friend about with him in his daily work, seating him with the barristers while he is actually engaged. One very eminent K. C., who is also in Parliament, rises in term time at 4 a.m., and reads his briefs for the day's work until 9, when he breakfasts and drives to chambers. Slipping on wig and gown at chambers and crossing the Strand, or arraying himself in the robing room of the Law Courts, he enters court at 10:30, and takes part in the trial or argument of various cases until 4 o'clock, often having two or three in progress at once, which require him to step from court to court, to open, cross-examine, or close, having relied upon the juniors and solicitors to keep each case going and tell him the situation when he enters to take a hand. From 4 to 6:30 he has consultations at his chambers, at intervals of fifteen minutes, after which he drives to the House of Commons, where he sits until 8:30, when it is time for dinner. If there is an important debate, he returns to the House, but tries to retire at midnight for four hours' sleep. Naturally the Long Vacation alone makes such a

Crossing the Strand from Temple to Court

life possible for even the strongest man. His success, however, means much, for there lie before him great pecuniary rewards, fame, perhaps a judgeship, or possibly an attorney-generalship, both of which, unlike their prototypes in America, mean very high compensation, to say nothing of the honor and the title which usually accompany such offices.

The English Bar is small and the business very concentrated, but no statistics are available, for many are called who never practice. By considering the estimates of well-informed judges, barristers and solicitors, it seems that the legal business of the Kingdom is handled by so small a number as from 500 to 800 barristers, although the roll of living men who have been called to the Bar now includes 9,970 names.

We have no Bar with which to institute a comparison, for each county of every State has its own and all members of county Bars, practicing in the appellate court of a State, constitute the Bar of that State, which is a complete entity. Great commercial centres have larger ones and have more business than rural localities, but no Bar in America is national like that of London.

It would be interesting, if it were possible, to compare the proportion of the population of

England, which pursues the law as a vocation, with that of the United States, but no figures exist for the purpose. The number of barristers includes, as already stated, those who do not practice, while an enumeration of the solicitors' offices would exclude individual solicitors employed by others, as will be explained hereafter. The aggregate of these two uncertain elements, however, would be about 27,000. The legal directories give the names of something like 95,000 lawyers in America of whom about 27,000 appear in fifteen large cities—New York, for example, being credited with over 10,000, Chicago with over 3,500 and San Francisco with about 1,500—leaving about 69,000 in the smaller towns and scattered throughout the land. These tentative, and necessarily vague, suggestions rather indicate that the proportion of lawyers may not be very unequal in the two countries.

CHAPTER IV

BARRISTERS—THE COMMON LAW AND THE CHANCERY BARS

BAR DIVIDED INTO TWO PARTS—NO DISTINCTION BETWEEN CRIMINAL AND CIVIL PRACTICE—LEADERS—"TAKING HIS SEAT" IN A PARTICULAR COURT—"GOING SPECIAL"—LIST OF SPECIALS AND LEADERS—SIGNIFICANCE OF GOWNS AND "WEEPERS"—"BANDS"—"COURT COATS"—WIGS IN THE HOUSE OF LORDS—BARRISTERS' BAGS, BLUE AND RED.

The Bar is divided into two separate parts—the Common Law Bar and the Chancery Bar; for a barrister does not try cases of both kinds as in America. The solicitor knows whether he has a law or equity case in hand, and takes it to the appropriate barrister. Common law barristers have their chambers chiefly in the Middle Temple and Inner Temple; chancery men, largely in Lincoln's Inn, and the two kinds of barristers know little of, and seem even to have a kind of contempt for, each other. Thus a common law barrister passes his life in jury trials and ap-

peals; whereas a chancery man knows nothing but courts of equity, unless he follows a will case into a jury trial as a colleague of a common law man to determine an issue of *devisavit vel non.* And there are further specializations—although the divisions are not so marked—into probate, divorce or admiralty men. Besides, there is what is known as the Parliamentary Bar, practicing entirely before Parliamentary committees, boards and commissions. It is, however, curious that in England no apparent distinction exists between civil and criminal practice and common law barristers accept both kinds of briefs indiscriminately.

At the Chancery Bar there is a peculiar subdivision which has already been mentioned. Having reached a certain degree of success and become a K.C., a barrister may "take his seat" in a particular court by appointment of the judge, as a "leader." Thereafter he can never go into another, except as a "special," a term which will be explained presently. For three pence, at any law stationer's, one can buy a list of the leaders in the six chancery courts, varying in number from three to five and aggregating twenty-five, and if a solicitor wishes a leader for his junior in any of these courts he must retain one out of

the limited list available. Hence, these gentlemen sit like boys in school at their desks and try the cases in which they have been retained as they are reached in rotation.

But even for a leader at the Chancery Bar, one more step is possible, a step which a barrister may take, or not, as he pleases, and that is: he may go "special." This means that he surrenders his position as a leader in a particular court and is open to accept retainers in any chancery court; but his retainer, in addition to the regular brief fee, must be at least fifty guineas or multiples of that sum, and his subsequent fees in like proportion. The printed list also shows the names of these "specials," at present only five in number. The list of leaders and specials in 1910 reads as follows:

A LIST OF HIS

USUALLY PRACTICING IN THE CHANCERY

THE FOLLOWING COUNSEL ARE NOT ATTACHED

Mr. Levett: Mr. Astbury:

COUNSEL WHO HAVE ATTACHED THEMSELVES TO PARTICULAR COURTS,

Mr. Justice Joyce Lord Chancellor's Court	Date of Ap'ointment	Mr. Justice Warrington Chancery Court 2	Date of Ap'ointment
Mr. T. R. Hughes	1898	Mr. Henry Terrell	1897
Mr. R. F. Norton	1900	Mr. T. H. Carson	1901
Mr. R. Younger	1900	Mr. George Cave	1904
		Mr. A. C. Clauson	1910

Mr. Justice Eve	Date of Ap'ointment	Mr.Justice Swinfen Eady Chancery Court 1	Date of Ap'ointment
Mr. P. O. Lawrence	1896	Mr. W. D. Rawlins	1896
Mr. Ingpen	1900	Mr. E.C.Macnaghten	1897
Mr. Dudley Stewart-Smith	1902	Mr. N. Micklem	1900
Mr. A. H. Jessel	1906	Mr. Frank Russell	1908
Mr. E. Clayton	1909		

NOTE—Counsel attached to the above Courts usually also practice before

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Mr. Upjohn: Mr. Buckmaster.

ARRANGED IN THE ORDER IN WHICH THEY ARE ENTITLED TO MOVE:—

Mr. Justice Melville	Date of Ap'ointment	Mr. Justice Parker Chancery Court 4	Date of Ap'ointment
Mr. Bramwell Davis	1895	Mr. W. F. Hamilton	1900
Mr. J. G. Butcher	1897	Mr. M. L. Romer	1906
Mr. C. E. E. Jenkins	1897	Mr. E. W. Martelli	1908
Mr. A. F. Peterson	1906	Mr. A. Grant	1908
Mr. F. Cassel	1906	Mr. J. Satey	1910

the Judge to whom the Companies winding-up matters are attached.

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The dress of barristers is the same for the Common Law Bar as for the Chancery Bar, but the details of both gown and wig signify to the initiated much as to the professional position of the wearer. The difference between the junior's stuff gown and the leader's silk one has already been referred to, but it is not true that a barrister having "taken silk," that is, having become a K.C. or a leader, always wears a silk gown, for, if he be in mourning, he again wears a cotton gown, as he did in his junior days, but, to preserve his distinction, he wears "weepers"—a six-inch deep, white lawn cuff, the name and utility of which originated before handkerchiefs were invented. Moreover, when in mourning his "bands"—the untied white lawn cravat, hanging straight down, which all barristers wear—have three lines of stitching instead of two. Under his gown, a K.C. wears a "court coat," cut not unlike an ordinary morning coat, though with hooks and eyes instead of buttons, while the junior wears the conventional frock coat. On a hot day, a junior wearing a seersucker jacket and carelessly allowing his gown to disclose it, may receive an admonition from the court, whispered in his ear by an officer.

Wigs, which were introduced in the courts in

1670, and have long survived their disappearance in private life, were formerly made of human hair which became heavy and unsanitary with repeated greasing. They required frequent curling and dusting with powder which had a tendency to settle on the gown and clothing. About 1822, a wig-maker, who may be regarded as a benefactor of the profession, invented the modern article, composed of horse hair, in the proportion of five white strands to one black; this is so made as to retain its curl without grease, and with but infrequent recurling, and it requires no powder.

The wig worn by the barrister in his daily practice has already been described, but, when arguing a case in the House of Lords he has recourse to an extraordinary head-dress, which is precisely the shape of a half-bushel basket with the front cut away to afford him light and air. This, hanging below the shoulders, has an advantage over the Lord Chancellor's wig in being more roomy, so that the barrister's hand can steal inside of it if he have occasion to scratch his head at a knotty problem, whereas his Lordship, in executing the same manoeuvre, inevitably sets his awry and thereby adds to its ludicrous effect.

To the unaccustomed eye, the wig, at first, is

a complete disguise. Individuality is lost in the overpowering absurdity and similarity of the heads. Then, too, there is an involuntary association of gray hair with years, making the Bar seem composed exclusively of old gentlemen of identical pattern. The observer is somewhat in the position of the Indian chiefs, who, having been taken to a number of eastern cities in order to be impressed with the white man's power, recognized no difference between them—although they could have detected, in the deepest forest, traces of the passage of a single human being—and reported upon returning to their tribes that there was only one town, Washington, and that they were merely trundled around in sleeping cars and repeatedly brought back to the same place.

By degrees, however, differences between individuals emerge from this first impression. Blond hair above a sunburned neck, peeping between the tails of a queue, suggests the trout stream and cricket field; or an ample cheek, not quite masked by the bushel-basket-shaped wig, together with a rotundity hardly concealed by the folds of a gown, remind one that port still passes repeatedly around English tables after dinner. But it must be said that, while the wig may add

to the uniformity and perhaps to the dignity—despite a certain grotesqueness—of a court room, yet it largely extinguishes individuality and obliterates to some extent personal appearance as a factor in estimating a man; and this is a factor of no small importance, for every one, in describing another, begins with his appearance—a man's presence, pose, features and dress all go to produce prepossessions which are subject to revision upon further acquaintance. One thing is certain, the wig is an anachronism which will never be imported into America. For the Bar to adopt the gown (as has been largely done by the Bench throughout the country) would be quite another matter and it seems to work well in Canada. This would have the advantage of distinguishing counsel from the crowd in a court room, of covering over inappropriateness of dress and it might promote the impressiveness of the tribunal.

The bag of an English barrister is also an important part of his outfit. It is very large, capable of holding his wig and gown, as well as his briefs, and suggests a clothes bag. It is not carried by the barrister himself, but it is borne by his clerk. Its color has a deep significance. Every young barrister starts with a *blue* bag and

can only acquire a *red* one under certain conditions. As devil, and as junior, he has ever before him the possibility of possessing a red bag. At last he succeeds in impressing a venerable K.C. by his industry and skill in some case, whereupon one morning the clerk of the K.C. appears at the junior's chambers bearing a *red* bag with his initials embroidered upon it—a gift from the great K.C. Thereafter he can use that coveted color and he may be pardoned for having his clerk follow him closely for awhile so there may be no mistake as to the ownership. Custom requires him to tip the K.C.'s clerk with a guinea and further exacts that the clerk shall pay for the bag, which costs nine shillings and sixpence, thus, by this curious piece of economy, the clerk nets the sum of eleven shillings and sixpence and the K.C. is at no expense.

CHAPTER V

SOLICITORS

LINE WHICH SEPARATES THEM FROM THE BAR—SOLICITOR A BUSINESS MAN—FAMILY SOLICITORS—GREAT CITY FIRMS OF SOLICITORS—THE NUMBER OF SOLICITORS IN ENGLAND AND WALES—TENDENCY TOWARD ABOLISHING THE DISTINCTION BETWEEN BARRISTER AND SOLICITOR—SOLICITORS WEAR NO DISTINCTIVE DRESS EXCEPT IN COUNTY COURTS—SOLICITORS' BAGS.

The line which separates solicitors from the Bar—the barristers—is difficult for an American to fully appreciate, for in our country it does not exist. The solicitor, or attorney, is a man of law business—not an advocate. A person contemplating litigation must first go to a solicitor, who guides his conduct by advice in the preliminary stages, or occasionally retains a barrister to give a written opinion upon a concrete question of law. The solicitor conducts all the negotiations or threats which usually precede a lawsuit and if compromise is impossible he brings a suit and re-

tains a junior barrister by handing him a brief, which consists of a written narrative of the controversy, with copies of all papers and correspondence—in short, the facts of the case—and which states on its back the amount of the barrister's fee. The brief is engrossed or type-written on large-sized paper with very broad margins for notes, and is folded only once and lengthwise so as to make a packet fifteen by four inches.

All Englishmen of substance, and all firms and corporations, have their regular solicitors and the relation is frequently handed down from generation to generation. It is, of course, impossible to have a permanent barrister, because the solicitor selects one from time to time, as the occasion requires, and the client is rarely even consulted in the choice. When an Englishman speaks of his lawyer, he always means his solicitor and if he wishes to impress his auditor with the seriousness of his legal troubles, he adds that his lawyer has been obliged to take the advice of counsel—perhaps of a K. C.

Hence, the solicitor, unlike the barrister, is not ambitious for fame, nor does he worry because he can not become the Attorney-General or a judge; his mind is intent upon the pounds, shillings and pence of his calling. He may seek

business, which the barrister can not do, and he is something of a banker, often a promoter. Some solicitors, especially those practicing at Liverpool, are admiralty men, others are adepts in the organization of corporations and in litigation arising concerning them and there are many other specialties. Some are men of the highest grade—particularly those employed by big companies or by families with large estates.

The venerable family solicitor of the novel and stage—that custodian of private estates and secrets who appears in all domestic crises, warning the wayward son, comforting the daughter whose affections are misplaced and succoring the gambling father, is sufficiently familiar. The worldly experience, which this kindly old gentleman brings from his musty office, is invaluable to his clients.

The large City firms of solicitors, on the other hand, occupy spacious suites of offices and maintain elaborate organizations like modern banks, with scores of clerks distributed in many departments, whose duties are so specialized that no one of them has much grasp of the business as a whole. The name of such a firm, appearing as sponsor for an extensive financial project, carries weight in the business world and its heads

enjoy generous incomes, besides being men of much importance upon whom the honor of knighthood is sometimes conferred.

In all England and Wales only about 17,000 solicitors took out annual certificates last year. This indicates the number of offices and does not include clerks (many of whom have been admitted to practice as solicitors), nor those who, for one reason or another, do not practice. Instead of being concentrated, like the barristers, in the Inns of Court in London, solicitors are scattered all over the town and throughout the Kingdom itself. Some, especially in the minor towns or poorer quarters of London, are in a small way of business and must earn rather a precarious living. Others are of a still lower class and seek business of a more or less disreputable character by devious methods, but all are supposed to have been carefully educated in the law and are answerable to their Society and to the courts for questionable practices.

The division of the profession between the solicitors and the Bar is no doubt a survival in modern, or socialistic, England of aristocratic conditions which it is the tendency of the times to weaken, if not eventually to abolish. It is somewhat hard upon the solicitor of real ability

to be confined to a limited field and to feel that, no matter how great his powers and acquirements, it is impossible to rise to the best position in his profession without abandoning his branch and beginning all over again in the barrister's ranks.

In associating with solicitors, one can not fail to be struck by their attitude towards barristers, as a class, which is hardly flattering to the latter; they frequently allude somewhat lightly to them as though they were useless ornaments and as if such a division of the profession were rather unnecessary. Upon asking whether the distinction exists in America, they receive the information that it does not with evident approval.

The advantages, however, of the separation of the functions of the solicitor from those of the barrister are distinctly felt in the superior skill, as trial lawyers, developed by the restriction of court practice to the limited membership of the Bar, which would hardly exist if the practice were distributed over the whole field of both branches of the profession. Then, too, the small number of persons composing the Bar enables greater control by the benchers over their professional conduct, and helps to maintain a high standard of ethics and the feeling of *esprit de corps*. Moreover, the Bar is not distracted from

the science, by contact with the business, of the law and it is saved from the contaminating effect of participation in the sordid details of litigation. At the same time, this very condition may be calculated to develop in the average barrister, as distinguished from one of real ability, an attitude approaching dilettanteism.

If the division of the profession ever ceases to exist, the change will no doubt come about by the gradual encroachment of the solicitors' branch upon the Bar. Already solicitors possess the right of audience in the county courts, the limit of whose jurisdiction is constantly being increased, with the result of developing a species of solicitor-advocate, whose functions are very similar to those of the barrister. The more this progresses, the greater will be the number of solicitors who will become known as court practitioners, and whose services will be sought by the public and even by other solicitors, providing an existing act forbidding the latter is repealed.

While such is the drift in England, there is at the same time a tendency in America to approach English conditions in the evolution of the law firm composed of lawyers of whom some are known as distinctively trial lawyers, while the other members devote themselves to the business

of the law, and indeed one now occasionally hears of such partnerships designating one of their number as "counsel" to the firm—which is, perhaps, an affectation.

Solicitors often become barristers—sometimes eminent ones, for they have had an opportunity to study other barristers' methods, and have acquired a knowledge of affairs. Of course they must first retire as solicitors and enter one of the Inns for study. The late Lord Chief Justice of England began his career as an Irish solicitor.

Solicitors wear no distinctive dress (except a gown when in the county court, as will be explained hereafter) but attire themselves in the conventional frock or morning coat and silk hat which is indispensable for all London business men. They all, however, carry long and shallow leather bags, the shape of folded briefs, which are usually made of polished patent leather.

CHAPTER VI

BUSINESS AND FEES

INFLUENTIAL FRIENDS OF BARRISTER—JUNIOR'S AND LEADER'S BRIEF FEES—FEES OF COMMON LAW AND CHANCERY BARRISTERS—BARRISTER PARTNERSHIPS NOT ALLOWED—ENGLISH LITIGATION LESS IMPORTANT THAN AMERICAN—CLERKS OF BARRISTERS AND SOLICITORS HAGGLE OVER FEES—SOLICITORS' FEES.

An American lawyer will be curious concerning two things, about which he will get little reliable information, viz., how legal business comes and what are its rewards.

The barrister supplements his reading, sometimes by practical service for a short time in a solicitor's office and nearly always by the deviling before described, and thus, in theory—and according to the traditions of the Bar—may pass years awaiting recognition. Finally, briefs begin to arrive which are received by his clerk with the accompanying fee, in gold, as to which the barrister is presumed to be quite oblivious. This, however, is not always the experience of the

modern barrister, who may have some relative occupying the position of chairman of a railway, or of a large City company, the solicitors of which will be apt to think of this particular man when retaining counsel. In such fashion and other ways, while he can not receive business directly from an influential friend or relative, but only through the medium of a solicitor, yet such connections are often definitely felt in giving the young barrister a start. His eventual success, however, as in every other career, depends upon how well he avails himself of his opportunities.

When briefed as a junior, without a leader, in a small action, his fee may be "3 & 1," meaning three guineas for the trial and one guinea for the "conference" with the solicitor. When briefed with a leader, however, his fee, which is always endorsed on the brief, may read:

"Mr. J. Jones ..... 35 guineas
1 guinea

36 guineas

"With you
SIR J. BLACK, K. C."

The leader's brief will be endorsed:

"Sir J. Black, K. C..... 50 guineas
2 guineas

52 guineas

"With you
MR. J. JONES."

The fee is not always sent by the solicitor with the brief, but a running account, with settlements at intervals, is not uncommon. Contingent fees are absolutely prohibited, the barrister gets his compensation, or is credited with it, irrespective of the result.

All speculation as to professional earnings of a barrister must be vague, for there can be little accurate knowledge on such a subject. Chancery men seem to earn much less than common law barristers and their business is of a quieter and less conspicuous character. At the fireside in chambers in Lincoln's Inn, if the conversation

drifts to fees, one may hear a discussion as to how many earn £2,000, and a doubt is expressed whether more than three men average £5,000, but the gossips will add that they do not really know the facts.

The fees of common law men, while larger, are equally a matter of guess-work. One hears of the large earnings of Judah P. Benjamin a generation ago, and R. Barry O'Brien, in his life of Sir Charles Russell, quotes from his fee book yearly showing that the year he was called to the Bar he took only £117, while thirty-five years later—in 1894—just before he was elevated to the bench, his fees for the year were £22,517. For the ten years preceding he had averaged £16,842, and, for the ten years before that, £10,-903. The biographer of Sir Frank Lockwood, a successful barrister, relates that he earned £120 his first year and that this increased to £2,000 in his eighth year, but he was glad to accept during his twenty-second year the Solicitor Generalship, paying about £10,000. The Attorney General, who, although his office is a political one, is generally a leading barrister, receives a salary of £7,000 and his fees are about £6,000 more.

The clerk of a one time high judicial officer now dead, is authority for the statement that the

year before he went upon the bench his fees aggregated 30,000 guineas. It seems to be the general opinion of those well informed that the most distinguished leader may, at the height of his career, take 20,000 to 25,000 guineas. All such estimates must, however, be received with the greatest reserve, and no one could undertake to vouch for them.

Barristers' fees are, of course, for purely professional services and do not come within the same category as the immense sums one occasionally hears of being received by American lawyers—not, however, as a rule, for real professional services in litigation, but for success in promoting, merging or reorganizing business enterprises. The fees of English barristers are practically all gain, as there are no office expenses worth mentioning. No suit can be brought by a barrister to compel the payment of a fee although the services have been performed, nor is he liable for negligence or incompetence in his professional work.

Partnerships, which are common between solicitors, are unknown to barristers and anything approaching them would be the subject of severe discipline. This is a fundamental law of the profession, never questioned, as to which the rulings

of the governing body of the Bar (some of which will be quoted in a later chapter) relate only to the application of the principle to different circumstances. In order to appreciate the abhorrence of partnerships, it is necessary to bear in mind the fact that the great science of the law is to the barrister strictly a profession, having no affinity to a business or a trade. No barrister can have the slightest personal concern in the interests which he advocates, his fee being never contingent, nor is he ever permanently retained by salary or otherwise. He is a purely intellectual ally of the court in the consideration of questions, more or less abstract, as to which he merely supports the view he has undertaken to urge.

Upon the whole, professional rewards do not strike an American as particularly large, remembering that the recipients are at the top of the profession in London, which means the Kingdom.

One can not escape the impression that litigation in England deals with minor matters as compared with that of America. There are no American data for comparison with the admirable judicial statistics of England, but, in listening to the daily routine of the London courts, in the tight little Island with its dense population and

well-settled rights, there seems to be a complete absence of those far-reaching litigations which arise in America, involving enormous sums, or conflicting questions concerning a whole continent, with its railroads and rivers extending as avenues of commerce for thousands of miles and with ramifications of trade running into many States, each with its separate sovereignty.

One circumstance rather indicates that the popular estimate of fees is above the truth, and this is the acceptance of judgeships by the most eminent barristers; still, judicial salaries in England are high—£5,000 at the least—not to speak of the compensation of the Chief Justice and Lord Chancellor, which are more.

Solicitors' clerks occasionally haggle and bargain with barristers' clerks in an undignified manner—but of this their masters are supposed to be in ignorance. And it seems that the matter of fees is sometimes abused. In the case of a celebrated barrister, now dead, it is whispered that his clerk would receive a retainer of 500 guineas on behalf of the K. C. who would be missing upon the cause being reached. The clerk would then tell the solicitor's clerk that the K. C. was overcrowded, and he did not believe he could get him into court unless 250 guineas were added to the

fee. After grumbling and protesting, the addition would be forthcoming, whereupon the clerk would readily find the K. C. strolling in the Temple Gardens, and fetch him to court. This, however, was not regarded as honest and the story itself is doubted.

In the case of solicitors, the acquirement of a practice is apparently much like establishing a mercantile business. The majority doubtless begin as clerks in existing firms, and, if men of ability, either rise in the firm or form their own associations. They are not hampered by the same considerations of delicacy and etiquette as the barrister, but may seek employment, although, of course, the one guarantee of real success is the honest and efficient handling of affairs with which they may be entrusted.

The profits of a large firm of solicitors are very great. Much of the money, however, is made in the transaction of business which is not of the profession at all, such as the promotion of enterprises, the flotation of companies, just as there is a class of American lawyers pursuing the same lines.

A solicitor's compensation, called "solicitor's costs," is not a matter of discretion, but is regulated by a recognized scale, although he may make

a special agreement with his client in advance, but it must be in writing and is subject to review by a Master as to its reasonableness. For an appearance in court the charge runs from 6s. 8d. to £1. 1s. 0d., according to the nature of the business and the time consumed. A charge reading, "To crossing the street to speak to you and finding it was another man, 1s. 3d.," has been ruled out.

A solicitor's compensation for services other than litigation is obtained by rendering to the client a regular bill, minutely itemized. The writing of a post card will justify a charge of three shillings and sixpence, but, for a letter the demand may be five shillings and sixpence with a half-penny for the stamp. Each interview at the office, and every visit to the client's town or country house, is charged for; while incidental outlays and expenses are carefully detailed, including the fees paid the barrister for his opinions, for the drafting of pleadings and for appearance in court. If the matter has involved proceedings in court in which the solicitor's client has been successful, then various costs are allowed as part of the judgment to be recovered from the opposite side, although they do not necessarily equal the charges to be paid by the client, as will be explained when

dealing with the subject of costs. Solicitors, unlike barristers, may sue for their compensation and are liable for negligence, although not for mistaken opinions upon questions of law.

CHAPTER VII

DISCIPLINE OF THE BAR AND OF SOLICITORS

THE GENERAL COUNCIL OF THE BAR—THE STATUTORY COMMITTEE OF THE INCORPORATED LAW SOCIETY—RULINGS ON VARIOUS MATTERS—LAPSES FROM CORRECT STANDARDS.

The discipline of the Bar—the maintenance of correct standards of professional conduct—is everywhere a difficult problem. In England, with the experience of centuries, good results are obtained, upon the whole, considering that human nature is alike the world over. The General Council of the Bar governs the Bar; the Statutory Committee of the Incorporated Law Society governs the solicitors. These two bodies occasionally confer together—or rather exchange views—in matters concerning the relations of the two branches of the profession.

The General Council of the Bar, having heard a complaint against a barrister, reports its findings with recommendations—perhaps of disbar-

ment in exceptionally serious cases—to the Benchers of the barrister's Inn. They alone have the power to act and nearly always follow the recommendation. Probably little difference exists in their deliberations, methods and actions in serious cases and that of corresponding disciplinnary agencies in the United States, whether called a Bar Committee or a Committee of Censors. Disbarment is an extreme penalty in both countries, inflicted only for moral turpitude amounting usually to crime.

But the General Council of the English Bar renders an even greater service to the profession in establishing standards of professional conduct, not only in respect of morality, but in questions of propriety and good taste. This is accomplished by resolutions upon submitted questions which seem to fall into two classes: those which are found contrary to a "Rule of the Profession" and those which are pronounced to be "Undesirable Practices". These rulings (without names or other particulars which might lead to identification) are all reported in the "White Book", an annual book of practice in general use, and constitute a code of ethics and etiquette.

An examination of these rulings shows very few findings upon rudimentary morals; it ap-

parently is taken for granted that lawyers are familiar with such commandments as "Thou shalt not steal." They deal chiefly with the more refined questions of professional conduct which often present difficulties even to men of honest instincts but who lack natural delicacy or experience.

An example of a course contrary to a rule of the profession is the following:

"*County Court Judge's Sons:* It should be recognized as a 'Rule of the Profession' (the quotation marks are the Council's) that no barrister should habitually practice in any county court of which his father, or any near relative, is the judge." An. St. 1895-1896, p. 6.

It is not necessary to discuss whether this would be applicable in America. Here the principle is probably recognized in the larger cities by the best element, whereas in the country, with only one county judge, it would prevent a son's following his father's profession. The ruling merely illustrates that in England there is an authoritative body which could be asked to declare how the profession regards such a difficult question as, whether suitors should be obliged to see their cases won or lost by the arguments of a son addressed to his father, or whether the son

should be excluded from the only court of his vicinity.

That a kind of sporting magnanimity is desirable but not required by any 'rule of the profession', is shown in the following, which refers to revenue laws requiring receipts and other papers to be stamped in order to constitute evidence:

"*Stamps:* It is undesirable that counsel should object to the admissibility of any document upon the ground that it is not, or is insufficiently, stamped, unless such defect goes to the validity of such document. It is also undesirable that counsel should take part in any discussion that may arise in support of any objection taken on the ground aforesaid unless invited to do so by the court." An. St. 1901-1902, p. 5.

The next point has been the subject of judicial rulings in America to the same effect:

"*Damages: Mentioning in Court Amount claimed:* There is a general understanding that it is irregular for plaintiff's counsel to mention during the trial the amount claimed by way of damages." An. St. 1898-1899, p. 11.

A series of rulings hold that a barrister occupying the office of town clerk, or clerk of any similar public body, "ought not" to practice at the

Bar and that it is "undesirable" for such an official to be called to the Bar. (An. St. 1896-1897, p. 9, 1898-1899, p. 10, 1899-1900, p. 5.) Again it has been held that there is a generally understood "Rule of the Profession" that a barrister should not practice at Quarter or Petty Sessions in the county of which he is a magistrate, but he may practice at the Assizes for his county. (An. St. 1901-1902, p. 6.)

The following illustrates the aversion to anything approaching advertising:

"*Photographs in Legal Newspapers:* It is undesirable for members of the Bar to furnish signed photographs of themselves for publication in legal newspapers." An. St. 1900-1901, p. 8.

Likewise the following:

"*Names of Counsel giving Opinions: Publication of:* The practice of certain newspapers publishing the names of counsel in connection with opinions printed in their columns has been altered to meet the wishes of the Council." An. St. 1896-1897, p. 9. This is a little obscure and furnishes no information as to what alteration was effected. The daily papers invariably print the names of all counsel and solicitors engaged in any reported litigation and the object of this ruling is

probably to prevent indirect advertising by writing opinions upon current topics.

In this connection it may be remarked that the law reports of the leading papers are far superior to similar reports in most American journals. The chief difference is that, instead of disjointed fragments throwing the sensational into disproportionate relief and thus conveying little idea of the whole, the reports are really accurate and symmetrical, the drama, however, losing none of its interest. The perusal of these reports, instead of leaving a desire to know what really occurred, gives a feeling of being fully informed. Brevity is served by admirable condensation of the evidence, arguments and rulings, and by the use of the third person in narration. By occasional recourse, too, to the first personal pronoun, and a verbatim report of graphic passages, the important and interesting phases of the case are emphasized. These reports indicate that the authors are men trained both in the law and in writing. So well done are those of the London *Times* that they are generally used in court for the citation of recent decisions, and, when collected and issued periodically, are universally employed for reference.

The English Courts scrupulously guard against the trial of cases in the newspapers rather than in court. In the recent trial of Dr. Crippen for murder, the proprietor of a provincial newspaper which, in printing the news of the arrest, had speculated upon the probability of Crippen's guilt, was summoned before the court after the trial had been concluded and was fined £100 on the ground that the article was calculated to interfere with the cause of justice. A prominent London daily newspaper was likewise fined £200 for relating that Crippen had confessed his guilt, while a London evening paper was fined a like sum because, during the course of the trial, it published a statement not contained in the evidence.

Many of the resolutions of the General Council of the Bar deal with the rights and privileges of the profession. One is thus reminded that the Inns of Court, which came into existence with the ancient London Trades Guilds, were founded originally for a like purpose—the protection of a particular occupation. The established vacations, for instance, are sedulously maintained by the notion that it is bad form for a barrister to be in chambers during this period, as though he would thus bid for briefs at the expense of his

fellows, and if a barrister happens to be in town and goes to his chambers, he does so rather surreptitiously and his clerk observes his confidence. It appears, however, that some young devil once attempted to obtain a ruling that another devil should not devil in vacation, but the Council declined to sustain his contention as follows: "*Devilling in Vacation:* There is no 'Rule of the Profession' against it." An. St. 1900-1909, p. 8.

A few years ago, there was a newspaper agitation against the Long Vacation which had always extended from August 12th to the first Monday of November. The result of the discussion was to lengthen it, by making it begin—as it now does—on August 1st. There are also liberal vacations at Christmas, Easter and Whitsuntide.

One resolution of the Council illustrates the fact, already referred to, that barristers are not nearly so intimately identified with litigation conducted by them as are American lawyers and that their cases are more or less like abstract propositions placed in their hands to be advocated. The resolution is as follows:

"*Briefs, Obligation to Accept:* The general rule is that a barrister is bound to accept any brief, in the courts in which he professes to practice,

at a proper professional fee. Special circumstances may justify his refusal to accept a particular brief. Any complaint as to the propriety of such refusal, if brought to the attention of the Council and by them considered reasonable, would be transmitted by them to the Benchers of the Inn of which the barrister is a member." An. St. 1903-1904, p. 15.

Conversely; a barrister can not offer inducements for briefs, as was held in the following: "*Commissions or Presents from Barristers:* Any barrister who gave any commission or present to any one introducing business to him would be guilty of most unprofessional conduct which would, if detected, imperil his position as a barrister." An. St. 1899-1900, p. 6.

Again:

"*Fees to Barrister's Clerk:* The clerk of Mr. A. informed the clerk of Mr. B. that the latter (Mr. B.) had received a brief on circuit because he had recommended the solicitor to Mr. B. (as was the fact) and suggested that Mr. B. should give him the clerk's fees which he would have received on it, had Mr. A. been on circuit and so able to accept the brief. Mr. B., considering that such a practice might lead to serious abuses, if it were countenanced, requested a pronouncement of the

Council on the matter. The Council expressed the opinion that the practice referred to is absolutely improper." An. St. 1904-1905 VII. p. 11.

A number of rulings serve to define the limitations or partial exceptions to the rule that a barrister's clients are exclusively solicitors and that he must never be in direct contact with litigants themselves.

For example:

"*Non-contentious Business:* There is no rule against a barrister advising in non-contentious business without the intervention of a solicitor, but it is an undesirable practice. If fees should be taken for such opinion, such fees must be marked and paid in the usual way, and on the ordinary scale, not by way of annual payment or salary." An. St. 1896-1897, p. 11.

Also:

"*Counsel advising on Case submitted by Colonial Advocates:* A counsel does not commit any breach of etiquette in advising, without the intervention of an English solicitor, on a case submitted to him by a colonial advocate in a colony where the professions of barrister and solicitor are combined." An. St. 1902-1903, p. 11.

On the other hand, it was held that a barrister

"should not" appear as spokesman for a deputation of contractors waiting upon a public body, nor on behalf of an application for a license, without the intervention of a solicitor.

The preservation of the barrister's dignity in his relations with the solicitor seems to have induced this:

"*Conferences at a Solicitor's Office:* The Council have expressed an opinion that as a general rule it is contrary to etiquette and improper for a barrister to attend conferences at a solicitor's office, but that under exceptional circumstances the rule may be departed from." An. St. 1904-1905, p. 10.

The complicated subject of one barrister assisting another, usually in the capacity of a devil, while avoiding quasi-partnerships, has been the occasion for frequent resolutions by the General Council of the Bar, of which the following are a few:

"It is not permissible, or in accordance with professional etiquette, for a counsel to hand over his brief to another counsel to represent him in court as if the latter counsel had himself been briefed; unless the client consents to this course being taken . . . . . In the Chancery Division it is not the practice for one junior to hold a brief

(other than a mere formal one) for another and the same is true of King's Counsel."

"In the King's Bench Division, in the case of juniors, it is not uncommon for one counsel to devil a brief for another: but in the case of King's Counsel it is very seldom done."

"There is no rule or settled practice governing the remuneration for devilling, or assistance given by one counsel to another, in the cases above referred to."

"With regard to juniors, it is a common practice in the Chancery Division for the one counsel to remunerate the other by paying him an agreed proportion, generally one half, of the fees the former receives in respect of opinions or drafting. In the King's Bench Division, remuneration for devilling of briefs or assistance in drafting opinions is not common. In both Divisions occasionally such work is remunerated either by casual or periodical payments."

"An arrangement of this kind is also not unfrequently made in the case of a King's Counsel who desires regular assistance from a junior in the perusal and noting of his briefs."

"So far as the Council are aware, there is no practice to pay any remuneration in the rare

cases where one King's Counsel holds a brief for another."

"In conclusion the Council desires to say that no practice in the least resembling a partnership is permissible or (so far as they know) practiced between Counsel: and they are of opinion that the etiquette of the profession forbids the handing over of work by one counsel to another, outside of the conditions above stated." An. St. 1902-1903. p. 4.

A large number of resolutions deal with the subject of fees and refreshers. Thus, it is held that while the Council is not a debt-collecting body, yet, where it is "in the interest of the whole profession" that solicitors who default in payment should be "exposed and punished" assistance may be given by the Council to a barrister in taking proceedings before the Statutory Committee of the Law Society—the solicitor's governing body. (An. St. 1901-1902, p. 13.) Again it was resolved that a junior Chancery man was not precluded by the etiquette of the Bar from accepting a refresher less in amount than two-thirds or three-fifths of the refresher accepted by the leader. (An. St. 1903-1904, p. 14.)

Somewhat in the same line is the following: "A King's Counsel should refuse all drafting

work and written opinions on evidence as being appropriate to juniors only; but a King's Counsel is at liberty to settle any such drafting and advice on evidence in consultation with a junior. A King's Counsel in accordance with a long-standing 'Rule of the Profession' cannot hold a brief for the plaintiff on the hearing of a civil cause in the High Court, Court of Appeals or the House of Lords, without a junior. It is the usual practice for a King's Counsel to insist on having a junior when appearing for the defendant in like cases and when appearing for the prosecution or the defence on trials of criminal indictments". An. St. 1901-1902, p. 4.

The following is more general than most of the resolutions as it states a fundamental rule rather than its refinements:

"*Junior and Leader. Proportion of Fees. Refreshers:*—By long-established and well-settled custom a junior is entitled to a fee of from three-fifths to two-thirds of the leader's fee, and, although there is no rigid rule of professional etiquette which prevents him from accepting a brief marked with a fee bearing a less proportion to his leader's fee, it is in accordance with the practice of the profession that he should refuse to do so in the absence of special circumstances affect-

ing the particular case and that he should be supported by his leader in such action. An. St. 1900-1901, p. 8. (The Council of Incorporated Law Society dissent from the view expressed in this resolution). The same rule applies to refresher". An. St. 1896-1897, p. 11.

The necessity for a barrister upon accepting a brief in a circuit of which he is not a member, to see that the solicitor retain a junior belonging to the circuit, which will later be explained, is recognized in the following resolution:

"*Special Fees at Assizes:*—The universal practice of the circuits since June 1876 (when the matter was considered by a Joint Committee of all the Circuits) is that a counsel going special on to one circuit from another circuit should, if a King's Counsel, have a special fee of 50 guineas in addition to the brief fee, and that one member of the circuit should be employed on the side on which the counsel comes special." An. St. 1899-1900, p. 8.

A resolution provides for the settlement of disputes between barristers and solicitors by their entering into an agreement to leave the questions to arbitration, the board to be composed of the chairman of the General Council of the Bar (or some member of that Council to be named by

him) and the President of the Incorporated Law Society (or some member thereof to be selected by him). An. St. 1897-1898, p. 9.

The following is a curious resolution:

"*Barrister Recommending another Barrister as his Leader or Junior:* A barrister ought not to recommend another as his leader or junior. And such questions as, who is the best man for a witness action in such a court? Which leader is *persona grata* in such a court? Do you get on all right with X— as your leader? are improper questions and should not be answered." An. St. 1902-1903, p. 3.

Illustrative of this ruling was a recent investigation of the charge that a barrister, about to leave town, had recommended another barrister to a solicitor—the objections being that such an act would not only violate the etiquette which forbids any barrister to laud or decry another barrister to a solicitor, but also that it might savor of co-operation in the nature of a partnership which would never be tolerated. The defence was successful, however, in showing that they were old Eton schoolmates and the solicitor knew them equally well.

The above extracts show how broad in scope and minute in detail are these authoritative rul-

ings on every phase of professional life and daily practice in England. Many of them would be totally inapplicable to American conditions, and, beyond affording a glimpse of peculiar customs and an elaborate etiquette, possess little value here. They do, however, show that the experience of the best Bar in the world justifies the existence of such a body ready to declare the standards of professional propriety.

It should not be inferred that in England there is no lapse from such standards. It requires some diligence to discover individual shortcomings, but inquiry will develop that even "ambulance chasing" is not unknown—although greatly reprehended and despised. If the American observer, on watching the trial of an action, perhaps against an omnibus company for personal injuries, will cautiously comment upon the array of solicitors and counsel representing a plaintiff apparently not possessed of a sixpence, and express wonder that he is able to afford it, the information will be forthcoming that some solicitor's clerk was probably in a neighboring "pooblic" and, hearing of an accident, had followed the injured man, perhaps to the hospital, and got the case for his master, whose remuneration would depend upon the result. Pressing the

inquiry further as to whether the solicitor advances the barrister's fees, it will reluctantly be admitted that some barristers have relations with solicitors that should not be looked into too closely—in other words that their fees are contingent. But it will also be added that they are taking great risks of exposure.

Any one who has sat on a Bar Committee, or on a Committee of Censors, in America must have been struck by the frequent instances where practitioners have fallen into error from sheer ignorance, due to inexperience or to the fact that they had not been born and bred to the best traditions. This is especially true in these days when law schools are grinding out members of the Bar who have had no real professional preceptors. As disbarment or suspension is too severe a penalty, such lapses pass unreproved and the standards sink, a result much more deplorable than the failure of individual discipline. Many a young lawyer would be induced to mend his ways if privately and fraternally informed of professional disapproval and some would be glad to seek the judgment of such a body if it could be had without exposing names or particulars.

In this way, too, a body of rulings on the pro-

fessional proprieties applicable to American conditions would be steadily forced upon the attention of the whole profession, instead of being locked in the breasts of the more reputable members to govern merely their own conduct.

CHAPTER VIII

THE CIVIL COURTS

THE GENERAL SYSTEM—DIFFERENT COURTS—RULES OF PRACTICE MADE BY LORD CHANCELLOR—JURIES, COMMON AND SPECIAL—JUDGES AND HOW APPOINTED—JUDGES' PAY—COSTS—COURT NOTES—SOME DIFFERENCE IN ENGLISH AND AMERICAN METHODS.

The general system of the English courts may be indicated without detailing the exact limitations of jurisdiction which would be too technical for present purposes.

Prior to 1873 there were a large number of courts with various titles, which had grown up through centuries of custom and legislation. But they were nearly all abolished by an Act of Parliament, or rather their functions were merged into the present far simpler system. In this radical re-arrangement, however, two courts—the highest and the lowest—survived; the House of Lords and the County Courts remain as they were.

Thus came into being the Supreme Court of

Judicature, composed of two branches—the High Court of Justice and the Court of Appeal. The High Court is the one of immediate interest because here are begun all litigations of every description, excepting the minor matters which go to the County Courts, or, perhaps, to the Registrar's Court.

The High Court is separated into three parts known as the King's Bench Division, devoted to jury trials which constitute the great bulk of business, the Chancery Division, where equity suits are considered, and the Probate, Divorce and Admiralty Division which deals, as its name implies, with the estates of deceased persons, with divorce, and with marine matters.

Each of these three divisions has a chief; the Lord Chief Justice of England presides over the King's Bench Division and the Lord Chancellor over the Chancery Division, while the head of the Probate and Admiralty Division, enjoys no higher title than that of "President." The number of judges in the different divisions is fixed by legislation and is determined by the extent of the business in each. In every court, except appeal courts, the evidence is heard by a single judge—of course in a separate court room—with the assistance of a jury in the King's Bench Division,

but, except in divorce cases, usually without any jury in the other tribunals which are equity courts.

It was the evident intention of Parliament to fuse equity and common law practice, but experience has not proved that this is very feasible, so that the line which separates the two is nearly as distinct as it ever was. Nevertheless, a certain amount of progress has been made in this direction—probably all that would be wise—particularly in the admission of equitable defenses in common law actions and in the facility with which, on the other hand, an equity court is enabled to obtain the verdict of a jury upon disputed facts without the old and cumbersome method of remitting the whole case to a common law court for a trial upon a special issue.

The rules of practice are established and can be changed by the Lord Chancellor with the approval of a majority of the judges. It is provided, however, that such changes must be submitted to Parliament and that they become void if either House passes a resolution of veto within forty days. The consequences of this very sensible arrangement are that the vast improvements in practice which have so greatly facilitated and accelerated English litigation, have been effected by the courts and the Bar of their

own initiative without the necessity to rely upon the action of a legislative body largely incapable of dealing with such technical and important questions.

This experience should be borne in mind in the present movement to lessen the law's delays in America, and the existing power of the courts should be utilized, or, if necessary, broadened, rather than permit Congress and the legislatures to attempt to deal with details which they can not in the nature of things fully understand. It will be recalled that the executive head of the American Government has not scrupled recently to designate our methods as, in some respects, "archaic and barbarous," and has directed attention to the present equity practice of the United States Courts. In them, testimony upon disputed facts is still elicited by an examiner—a method long since abandoned in progressive communities. Such an official, temporarily appointed by the court, possessing but limited power and often with little experience, merely presides, while a stenographer notes the oral evidence subsequently to be reproduced in typewriting or print. Thereafter, in some instances, a Master is appointed to consider the testimony and report his conclusions, while later the court

itself does the same thing over again. All lawyers know how weak in effect is evidence when reduced to cold type, as compared with that which falls from the lips of living witnesses, and how faint and inaccurate are the impressions produced by the former upon the mind of a judge, no matter how industrious and able he may be. Hence, in enlightened systems of jurisprudence, the witnesses are called directly before the tribunal which is to decide the facts upon their testimony—exactly as they would be brought before a jury.

The power to bring about such a salutary change inheres in the Supreme Court of the United States which, by the simple promulgation of an order to that effect, without any further legislation, can forever abolish the obsolete system now in vogue. This was accomplished years ago in England and has also been brought about in some American States—such as Pennsylvania, Vermont and others—with the result that equity proceedings have been much shortened in duration and lightened in cost, to the infinite relief of court, counsel and litigants.

In the King's Bench Division—the only court holding jury trials except the County Courts—the jury of twelve men may be either a "common"

jury or a "special" jury. Common juries are composed of men having practically no property qualification, it being required only that they shall occupy realty the rental of which is equivalent to £10 a year. The result is to exclude those merely who are practically homeless, as such a rental represents less, perhaps, than the hire of a single room. The requirements therefore for service on an ordinary jury would seem to be little more than that the juror should have a known place of residence. His compensation for services is but one shilling a day.

Special juries, on the other hand, which may be claimed as a right by either party and whose services are paid for by the litigants rather than by the Government, receive one guinea a day and the members must occupy premises renting for not less than £50 a year, or a farm worth £300 yearly, or they may be bankers, merchants, or persons upon whom minor titles have been bestowed. The employment of special juries is increasing in frequency at the expense of ordinary juries and it seems that the facility to obtain them is also cutting down the number of trials which the law permits to be conducted by the judges without any jury at all, provided the parties so agree.

The Chancery Division, as stated, is the tribunal for equity trials where juries are rarely employed, but the judge determines both the law and the facts. Into this court therefore comes all the equity litigation of England, although, for very limited sums, there is a concurrent jurisdiction in the County Courts. The separation which exists between practice in this court, and the barristers who practice therein, as compared with the common law courts, has already been described at length. The judges in the equity courts never wear gowns containing any colors except black.

The Probate, Divorce and Admiralty Division of the High Court of Justice is, like the Chancery Division, a court of equity, as distinguished from a court of law, in which the trials are conducted by a judge without a jury. Here are considered all matters concerning decedent's estates, the construction of wills and the distribution of property. Divorces occupy much time of this Court and furnish sensational material for English newspapers. They form an exception to the general rule in the Probate, Divorce and Admiralty division in the presence of a jury and in the submission of the facts to them.

The Admiralty Court is of course confined to

maritime matters and the room is adorned by a gilt anchor fixed upon a shield hung upon the wall behind the presiding judge, who is assisted in the technical matters by two Trinity Masters —retired sea captains.

The County Courts number about 500, not confined to London but dotted all over England, the districts of which are much smaller than counties, notwithstanding they are called County Courts. One judge suffices for a number of these courts which are grouped into circuits. In most courts the judge is allowed to decide both facts and law, but a jury of eight men can be had at the instance of either party. The jurisdiction is at present limited, in common law cases, to £100 and, in equity actions, to £500; while there is no jurisdiction whatever in the matters of divorce, libel or slander. In these courts, as will be explained later, barristers rarely appear but solicitors are allowed to act as advocates. The County Courts were established in 1846 and, as mentioned, were not disturbed in the reorganization of the courts in 1873, the idea being to bring the administration of justice closer to the people's homes and to reduce its cost. The County Courts no doubt serve to relieve the High Court of a great mass of petty litigation, and in that respect

are extremely useful, if rather uninteresting. An appeal lies from the County Court to the High Court on points of law but it is not often exercised. For very small matters—chiefly the collection of trifling debts—the Registrar's Court, which is likewise not confined to London, performs useful functions which will hereafter be described more particularly.

Besides the courts above mentioned, there survive a few local courts which in some manner have escaped the effect of reconstructive legislation, but they are so unimportant as scarcely to deserve notice.

Such, briefly, is the English arrangement of courts for the disposal of civil as distinguished from criminal business.

The judges of all courts are appointed—not elected—and their terms of office are for life with provisions for retirement and pension. Judicial salaries are much higher in England than in America. Ordinary judges of the High Court get £5,000, the Lords of Appeal, £6,000, the Chief Justice, £8,000, and the Lord Chancellor, £10,000. The appointing power—nominally the crown—is really the Lord Chancellor, who, unlike the Lord Chief Justice and all the other judges of England, is a political incumbent

changing with the Government. It might be supposed from this fact that the Lord Chancellor would yield to a natural temptation in making judicial appointments and that his selections would constitute a distribution of political patronage. There appears to be nothing in the law to prevent this, and formerly judges were largely appointed for political considerations or by reason of personal or social influences.

At present, however, the least observation will convince any one that the great majority of judicial appointments in England are made solely out of consideration for character and professional attainments. With few exceptions the judges appointed in modern times—no matter what party may have been in power—have been selected from amongst the leading barristers of the day, and a person who has been in the habit for years of frequenting the courts at intervals, is almost sure, when he misses an eminent barrister from the front row, to find him on the bench, if alive. While this is the general rule, it is true that in rare and exceptional cases one hears of the appointment of a judge who is regarded by the profession as not being well qualified and his selection is attributed to influence. The just admiration which Americans entertain

for the English judiciary as a body will in such instances not be reflected by the views of the English Bar, with opportunities for observation at closer range. Barristers will remark that a given judge is not a lawyer at all, but merely had the gift of gaining cases before juries, and that the political influence he acquired induced the government to give him an office for which he is ill equipped. And one may even hear the statement made concerning some judge, "I can not say he is venal; I can not say he can be bought for money; but he has naturally a dishonest mind and can not perceive the truth."

A stranger is left to speculate how far such views may reflect some past grudge and he will probably come to the conclusion that the high standing of the English judiciary, in the opinion of all the world, is fully deserved, but that there are some few exceptions to this general excellence.

Costs play an important part in all English litigation. The tendency since the time of the Stuarts has been constantly to increase them. By costs—as understood in England—is not meant the official fees payable to the court officers, but a sum which the unsuccessful party is condemned to pay to the successful party, the aim

being to indemnify the side whom the event proves to have been in the right. If a litigant has incurred expense to obtain a judgment for a sum of money, then he must be reimbursed by the other side who occasioned his outlay by refusal to pay. On the other hand, if an unjust claim has been made against him, the claimant must repay his expenses in resisting it.

Part of these costs are taxed as the case proceeds. Thus, if one party summon another before a Master prior to trial, to obtain an order for the production of some document, the Master imposes costs—say £2. 10s. 0d.—upon the party who refused to produce, or upon the party who, the Master finds, has unwarrantably demanded the production. The theory here is to discourage unnecessary and harassing interlocutory proceedings.

But the principal costs "await the event"—follow the course of the final judgment. They include an allowance for counsel fees, which, however, is not always as much as the amount paid by the litigants. For, if a litigant has indulged in the luxury of an unusual array of counsel, he must do so at his own expense, and the Master allows only what he should have laid out in fees. Thus, in a petty action, caused by some

personal pique, the plaintiff may have insisted that his solicitor retain a K. C. at fifty guineas and a junior at thirty-five guineas, involving a total expense, with three guineas for the consultation, of eighty-eight guineas. The defendant, however, has been content with a junior at "3 & 1." If the plaintiff succeeds, the Master will not allow him the eighty-eight guineas, but will decide that the more modest armament of the defendant would have been sufficient.

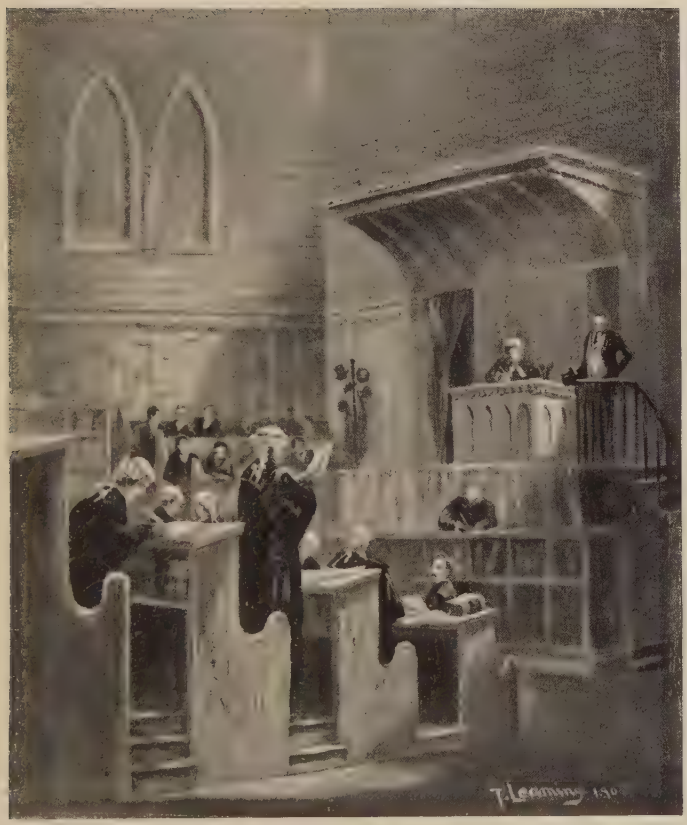
Costs are, upon the whole, very high. In an ordinary action to recover a moderate sum—say £200—the costs will generally amount to £50. In a recent action to recover £60, the balance of the purchase price of a motor car, costs were claimed of over £400, and actually allowed in a sum over £200. Though this was exceptional, owing to the unreasonable stubbornness with which a just claim was resisted, and is by no means typical, yet it illustrates the possibilities of the system.

In theory it seems reasonable that the party in the wrong should reimburse the party in the right for having vexatiously put him to expense in obtaining his due. In practice, however, the prospect of large costs may stimulate unjust suits by impecunious plaintiffs—unable them-

selves to respond in costs if defeated—against richer defendants vulnerable for whatever the chances of war may have in store for them. To this criticism English lawyers can only answer that if the plaintiff is unable to give security for costs, he may, in actions of tort, at least, be remitted to the County Courts, where the costs are much lighter. This, however, is merely a mitigation of the evil.

The general opinion seems to be that high costs discourage litigation. This may be true, but if they tend as well to obstruct the assertion of just rights and to stimulate fictitious claims, they are not to be desired by the profession or by the laity.

A jury trial strikes one as more cut and dried in an English than in an American court. Apparently, through the exchange of documents and otherwise, so much is known to the opposing counsel, solicitors and judge, that the element of surprise is largely eliminated. If all the litigants were honest, and the law were an exact science, this might conduce to a deliberate consideration of the questions involved. But what American advocate, having confronted a disingenuous witness with his own letter, utterly at variance with his testimony, could say that the cause of justice would have been better served if the witness had



A Jury Trial

known that the letter was to be produced and had had the chance to regulate his evidence accordingly? And what American lawyer would not feel that half the fun of life were gone?

During the examination of witnesses, notwithstanding the rapidity of articulation, an American ear is struck by a certain lack of snap and by the great deliberation and long intervals between questions, which afford—especially for a dishonest witness under cross-examination—too much time for reflection. This impression may be due to differences in national temperament, and the examination may seem even rapid to an English listener. Perhaps the chief cause of the hesitancy is the fact that the examiner has obtained his information at second hand, from his client the solicitor, or his junior or devil, and has to feel his way. A kind of confidence in the veracity of witnesses appears to pervade the court; and they are, indeed, as a rule, uncommonly frank.

English barristers do not know their cases as well as American lawyers. They have not conducted the preliminaries, nor become acquainted with and advised the parties they are to represent; in other words, they have not "grown up with the case," and the facts are more like abstract propositions lately placed in their hands to

be presented. It is not unusual during the trial, when some unexpected situation arises, to see evidence of a lack of familiarity with the circumstances which requires instant reference to the solicitor.

The judges take a larger part in trials than in most American courts—a practice which has much to commend it, and which is increasing on this side of the water. An American lawyer will say, "I tried a case before Judge So-and-so"—an English barrister says: " I conducted a case which Lord So-and-so tried." The English judge restrains counsel, often examines the witnesses, and his influence is quite openly exerted to guide the jury and cause them to avoid absurdities and extremes. Yet, the crucial questions of fact really to be determined—of which there are usually but one or two—are left absolutely to the jury's unfettered decision.

Objections to questions by opposing counsel, which cut so large a figure in an American trial, are rarely made. One is told that the barristers know the rules of evidence too well to ask improper questions and that they have too much respect for the court to hazard a rebuke. This is a very pretty, but hardly a satisfactory, explanation. Observation of many trials gives the im-

pression, rather, that great laxity prevails as to what is a proper question and that the party aggrieved by an objectionable one prefers to rely upon the reaction in his favor in the judge's mind, which will be shown when his influence comes to be exercised upon the jury.

That this laxity prevails, the least experience will show. Upon direct examination leading questions, which in America would bring a storm of objection, pass unnoticed, and even hearsay evidence is not unknown. The absence of the element of surprise in trials, may make those concerned more tolerant of counsel leading in a story known to all beforehand. The occasional element of hearsay is more difficult to explain unless, indeed, the French view gains in England, which justifies the admission of hearsay on the ground that in the most important questions of life—for example, in respect to the reputation of a man whom one contemplates trusting, or of a woman one thinks of marrying—men act exclusively upon hearsay and never upon direct evidence. But, of course, the law of evidence remains in England as it always has been: all that is here meant is that a degree of tolerance prevails and upon careful observation, the real cause of this tolerance will be found in the fact that both sides

rely on the influence of the judge to eliminate from the minds of the jury the effect of evidence wrongly introduced.

In England, mistress of the seas, with much the greatest merchant marine in the world, and with a large insular population living in close touch with the water, one finds, as might be expected, the best Admiralty Courts and Bar in the world.

The chart used by counsel in examining witnesses is pinned to a sloping table, among the barrister's benches and facing the Court. In collision cases, small models of steamers and sailing vessels, as well as arrows to indicate winds and tides, are employed. All of these may be veered and shifted as the trial progresses, by means of thumb pins projecting beneath and capable of being pressed into the table which has a cork top. The Admiralty trials are beautifully conducted and great familiarity with the affairs of the sea is displayed by the participants.

Models are very much used in all English Courts. In land condemnation, nuisance injunction and accident cases, one frequently sees elaborate models reproducing the *locus in quo*. In actions concerning floods or other occurrences affecting considerable areas, models many square

feet in size, reproducing the whole locality, are employed.

The Chief Justice sits at nisi prius more often than upon appeal. It seems odd, during the trial of an action for damage caused by a flood due to the alleged improper construction of a bridge, to see the Lord Chief Justice of England reaching far down with a long white, lath-like stick, into the solicitors' well to point out some feature of a model while interrogating a witness, and afterwards charging the jury stick in hand. It is still more strange to hear a judge, whose name is known the world over, gravely charging a jury as to the value, as evidence of identity, of a wart under the tail of a costermonger's donkey, the ownership of which is in dispute. Yet, like every feature of an English court, it is eminently practical and free from form or affectation.

The highly paid judges of the High Court, sit in the smallest case; the idea seems to be that if a man desires to assert his rights, however insignificant, it is the duty of the Government to afford him the opportunity. In the Divisional Court (an appeal court of limited jurisdiction) the Lord Chief Justice of England and two famous colleagues did not grudge, upon a recent occasion, to hear an appeal involving nominally £22.-

11s. 6d., payment on account having reduced the actual amount in controversy to £2. 11s. 6d. As the salaries of the occupants of the Bench were not less than £20,000 a year—to say nothing of those of the court attendants, and the fees of the barristers and solicitors on both sides—the economy of such an employment of human effort is not apparent. Some one, however, thought his rights had been invaded, which justified the waste, while the costs furnished a small stake upon the result.

CHAPTER IX

COURTS OF APPEAL

THE COURT OF APPEAL—HOUSE OF LORDS—DIVISIONAL COURT—JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

The Court of Appeal—the last resort except for occasional cases which reach the House of Lords and Colonial appeals which go to the Privy Council—is, perhaps, the most perfectly working tribunal for the adjustment of conflicting rights which the wit of man in any age has devised. It is divided into two parts of three judges each, sitting simultaneously. The Lord Chancellor, the Chief Justice, or the Master of the Rolls presides over the respective parts and two associate Lord Justices of Appeal compose the court.

Printed briefs are not used, though the advantage of this omission is not apparent. There is no bill of exceptions and the appeal is in name, as well as in fact, a motion for a judgment the reverse of that rendered below or, in the alternative, for a new trial, and everything which transpired is open to review. Three barristers—the leader,

junior and devil—together with the solicitors, are usually found on either side.

The leader for the appellant opens, stating the case with great particularity, and reads from the evidence, documents and charge to the jury at great length. Much time is thus spent because, for no discoverable reason, but probably due to ancient custom and lack of enterprise, the material is all in manuscript, often illegible and with occasional errors in the copies of the Court and opposing counsel. The result is tedious and prosy and an American auditor gets an unfavorable impression at this stage of the argument; an impression, however, which is later dispelled.

During the irksome opening, the court has been getting a grasp of the case, as becomes apparent when the argumentative stage is reached, for then there ensues a good tempered, courteous, informal debate between the several gentlemen, comprising the court and counsel. There is no "orating" and no declamation. The positions of the opponents are stated rapidly and smoothly. Each, as enunciated, is taken up by one or more members of the court and distinct intimation given whether the court agrees with the speaker. In case it does, he may pass on. On the other hand, deferential dissent may warn him to

strengthen his position, or a frank expression of doubt may be accompanied by a friendly invitation to the other side to contribute suggestions.

At the conclusion, judgment is rendered orally, in nine cases out of ten, by the presiding Lord Justice, as the last speaker resumes his seat. Then follow the opinions of the associate Lord Justices of Appeal, concurring or dissenting, all expressed with the utmost frankness and spontaneity. These are taken down stenographically, and, after revision, sometimes by the judge himself, find their way into the books to become authorities. Occasionally a "considered judgment" is reserved to be delivered within two or three days.

The contrast presented by these methods (for the system is not essentially different) to the average American appeal is very great. In America, only the ablest men know by a kind of intuition upon what points their cases will turn, and one often hears a more or less stereotyped speech delivered to a court sitting like silent images, without the slightest intimation to the speaker whether he is wasting effort upon conceded points, or slighting those upon which he may discover by the written opinion—delivered months afterwards—he has won or lost.

Sometimes these friendly debates in an English court of appeal are witty, and they are often rather amusing. In a case recently argued, the defendant, a real estate owner, appealed from a judgment for £300. against him for wrongfully evicting his tenant, the plaintiff, and putting his sick wife and furniture out on the sidewalk in the rain. There was not much to be said in his favor upon the merits of his act, but his counsel argued that plaintiff's advocate had used inflammatory language in his speech to the jury.

The judgment was immediately affirmed, the Lord Chancellor delivering an opinion to the effect that the control of the language used was a matter of discretion for the court below and could not be examined by the appellate court. Both of the associate Lord Justices concurred, but one proceeded to give quite different reasons. With the preliminary words: "Speaking only for myself, but not for his Lordship," and with a slight inclination of his head towards the Lord Chancellor, he said he was for affirming for an entirely different reason—not because he could not examine the language used below, but rather that he had done so. He then proceeded to rehearse the brutal conduct of the defendant, and wound up by declaring, "If it had been my sick wife and

my furniture which had been set out in the rain under the circumstances described, I do not think the English vocabulary contains the language I should wish my counsel to use in addressing the jury." This was received, as is not uncommon in England, but unheard of in America, with frequent laughter and even subdued applause, and the "London *Times*," in its regular legal column the next day, reported the opinions and indicated the "laughter" and "loud laughter" in brackets. The opinions in the books, after being toned down by the reporter, often bear but faint resemblance to the actual utterances.

In the House of Lords appeals are equally informal and colloquial, an impression that is heightened by the absence of wigs and gowns, so far as the bench is concerned, and by the very casual manner in which the half dozen gentlemen composing the court are seated. The house itself is a large, oblong chamber with steep tiers of seats, upholstered in red leather, which rise high up the side walls and upon which the peers sit when legislating, but which are, of course, empty when the court only sit. At the far end is an unoccupied throne, while, at the near end, raised above the floor, is a kind of box from which counsel address the court. It is much like the

rear platform of one of our street cars. Counsel, of course, are in wig and gown, and if K. C.'s, in full bottomed wigs, but one may occasionally see a litigant actually arguing his own case *in propria persona.* On either side of the counsel's box is a very narrow standing place for reporters and the public.

The court, consisting of the Lord Chancellor in gown and full bottomed wig, and perhaps of five judges, in ordinary clothing, sit at the floor level, and therefore considerably lower than counsel in the elevated box. They are not placed in a row nor behind any bench or table. On the contrary, though the presiding Lord Chancellor is vis-a-vis to the counsel box, the others sit where they please. Sometimes this is on the front row of benches and sometimes on one of the higher tiers, with a foot propped up, perhaps, on the bench in front, and their thumbs hitched to the armholes of their waist-coats, and, necessarily, with their sides to the speaker. The members of the court often have portable tables in front of them, piled with books and papers. During the course of an argument they constantly debate with each other across the House, or walk over to one of their colleagues with some document or a book and talk of the case audibly and perfectly

freely. One may hear one of them, in a salt and pepper suit, call across the floor to another Lord of Appeal who has interrupted a barrister's argument, "I say, can't you give the man a chance to say what he's got to say?"

These little circumstances show that judges and counsel in the appellate courts of England behave as natural men without the slightest restraint, formality or self-consciousness. Arguments are delivered with surprising rapidity of utterance, in a conversational tone, and with a crispness of articulation altogether delightful to the ear. The drawling style of speech sometimes heard on the stage as typical of a certain kind of Englishman, seems to have disappeared in real life; it certainly is not to be found in the Courts. An American stenographer reporting an English argument, would have to increase his accustomed speed at least one-third.

The methods of the Divisional Court are the same as those of the Court of Appeal, but the low limit of its jurisdiction renders it of little interest.

The Judicial Committee of the Privy Council—or, as it is colloquially described by the lawyers, "The Privy Council"—is doubtless the most interesting court in England because of the vari-

ety of the questions there considered and owing to the fact that, geographically, the litigations originate in nearly every quarter of the civilized world, for, as noted above, this is the court of last resort for all of the British Colonies. It should not be confused with the Privy Council itself—a political adviser of the Crown—for the Judicial Committee's functions are purely judicial and its personnel consists of such Lords Justices of Appeal as are assigned to it from time to time. Historically, indeed, it was but a subcommittee of the Privy Council which circumstance gives the Court its name and explains why its judgments always conclude with the phrase that the Committee "humbly advises His Majesty" to affirm or reverse the judgment rendered in the Colony, instead of pronouncing the conclusion in direct language, as do other courts.

This extraordinary body sits in a large second story chamber, not in the least resembling a court room, of a building in Downing Street, and rarely is there any audience other than the professional men whose business takes them there.

Of course, most of the Colonies are equipped with their own court of appeals—usually called the Supreme Court—but, nevertheless, an ap-

peal lies from their decisions to the Privy Council in certain circumstances, although to define exactly the scope of this jurisdiction would be too technical for present purposes.

Here are to be found, arguing their cases, lawyers from Colonies in every corner of the globe in some of which the division of the profession into barristers and solicitors hardly exists, or at least, the line separating them is quite hazy—but they must all appear in wig and gown.

Bearing in mind the fact that the Colonies of Great Britain are scattered over the whole world and that it has always been the policy, so far as possible, to accept the existing law of each and graft it upon the English law system, the diversity and broadness of this court's deliberations may be imagined.

The succession to an Indian Principality, to be determined under the ancient law of that far Eastern land, will be followed by a question of the legality of the adoption of a child in South Africa, to be considered under the rules of Dutch law. The next case will, perhaps, involve the effect upon an area much greater than that of all England, of the diversion of a river in the Canadian North-West. And the court may next turn its attention to the problem whether the widow of

a Scotchman who left two wills—one intended to operate at home and the other to take effect in Australia—can take her thirds against the will in Scotland but accept the benefits of the other will as to property in Australia.

The Court of Appeal and the House of Lords deal with domestic matters of the little Island, which, however important the principles involved and however critical the issues to the litigants themselves, seem almost petty in comparison with the broad field of the Privy Council. Little as the average man knows of it, and rarely as it figures in news of the day, no American lawyer can fail to perceive in this great court something of the tremendous scope of his own Supreme Court of the United States, to which tribunal only is the Privy Council secondary.

CHAPTER X

MASTERS: THE TIME SAVERS

CURRENT HEARINGS—MINOR ISSUES THRESHED OUT.

The numerous motions and interlocutory applications, supported by affidavits and urged by argument, which consume so much of the time of an American court, are disposed of in England by Masters—competent barristers appointed by the Courts, who are paid salaries of about £3,000 a year.

At a certain hour the Master takes his seat at a desk with a printed list of "applications without counsel" or "applications with counsel." He nods to the uniformed officer at the door who admits the solicitors engaged in the cause which happens to be first on the list of cases "without counsel." The solicitors stand before the Master with a shelf upon which to rest books or papers; one side then states its demand and the other its objection in the briefest and most direct manner. The Master's immediate oral decision, accompanied by imposition of the costs and a few

scratches of his pen on the back of the summons, indicates to the officer the opening of the door to admit the next case. By actual count twenty-seven cases may thus be disposed of in one hour and thirty-two minutes—an average of a little more than three minutes each. Of course there is a right of appeal, which, however, is rarely exercised.

As the door opens two solicitors hurry in. There are no salutations nor introductory remarks and the business proceeds abruptly:

Plaintiff's solicitor: "Master, we claim £50 judgment for rent."

Master to defendant's solicitor: "Do you admit the amount?"

Defendant's solicitor: "Yes, but we claim a set-off."

Master: (endorsing a few words on the summons) "Judgment for rent £50 with stay of execution until counter claim is tried."

Defendant's solicitor: "If you please, Master."

This expression is the universal vernacular with which the defeated party accepts the judgment of a master or judge in all courts. The expression is not an interrogation but is equivalent to "as you please."

Out they go and the next enter; here the de-

fendant asks for delay, and gets seven days which is endorsed on the summons and requires a minute.

Then comes an application under "order XIV" for judgment for £1,000. Defendant requires four days' delay.

Master: "What is the defence?"

Defendant's solicitor: "Master, I don't know—a recent agreement has been made between the parties which I have not yet seen."

Master: "I'll give you four days, but you must pay the costs of the adjournment; thirteen shillings and fourpence."

Defendant's solicitor: "If you please, Master."

The next summons for judgment. As this is denied, the parties agree to try it before the Master on the following Thursday without a jury.

Then follows a summons by defendant upon plaintiff for particulars of goods sold and delivered. Both parties are dealers in Japanese bulbs, and the sale was made subject to arrival in England safe and sound. The defendant demands particulars of the plaintiff as to who were his customers. The plaintiff objects to disclosing his business and the written summons, containing the request for particulars, is gone over rapidly by the Master. Such parts of the request

as, in his opinion, ought not to have been demanded, because they pry into the plaintiff's private affairs, are eliminated by a stroke of the Master's pen and an order is made at the bottom in an abbreviated form, imposing the costs of the summons upon the plaintiff. This means that the plaintiff is obliged to furnish the defendant, in so many days, all the particulars which the Master did not strike out, and must pay the defendant the costs of the application.

A moment is consumed in giving judgment in an uncontested case for £1,800 with costs of £8. 16s. 0d.

Then comes a breach of promise case. The defendant asks for an order upon the plaintiff for a statement of claim and discovery of correspondence, which is granted. As most of the witnesses are in London, the defendant wants to try the case here, but the plaintiff wishes to try it in Manchester where the parties live. The Master thinks it is easier to bring two people up from Manchester than to take a dozen down from London.

Next is a summons for directions:

Master: "Statement of claim in ten days."

Plaintiff's solicitor: "Yes, Master."

Master: "Defence in ten days."

Defendant's solicitor: "Yes, Master."
Master: "No counter claim?"
Defendant's solicitor: "No, Master."
Master: "Documents?"
Both solicitors: "Large number."
Master: "All parties in London?"
Both solicitors: "Yes."
Master: "Any question of law?"
Both solicitors: "No."
Master: "Next case."
And he at once endorses a few words on the bottom of the summons.

Then a defendant appears in person:
Master: "Do you owe the £26?"
Defendant: "Yes, sir."
Plaintiff's solicitor: "We only want judgment for £21 because this morning he paid £5 on account, and he agrees to pay £3 a week, so that we will not issue execution if he does this."
Master: "I'll give you judgment generally for £21, but you write defendant a letter stating that you will not issue execution as you have just stated."

Another defendant appears in person:
Defendant: "I've got no defence, all I want is time."

Plaintiff's solicitor: "We'll do nothing until Monday as we think he means to pay."

Master: "All right, it is understood you will do nothing until Monday."

The details of practice before these Masters would be beyond the scope of the present writing, suffice it to say that rules have been promulgated from time to time, and are constantly being improved upon, having for their object the simplification of procedure, the rapid despatch of business and the settling of all minor questions which may arise in a case before actual trial. Thus, "Order XIV," just referred to, enables a Master to enter judgment when the defence averred, even if true, would not be effectual, or when the defence is obviously frivolous, although, of course, the rights of the defendant are preserved by the privilege of appeal, the judgment, meantime, binding his property. Again, the "summons for directions" is to enable the Master to give general directions as to how the parties shall proceed, the intervals of time to be allowed for exchange of copies of documents, taking foreign testimony and what not.

One of the cleverest contrivances in the practice before Masters is the "tender of damages in tort without admitting liability." A defend-

ant may tender, say, £500. If plaintiff does not accept it, the trial ensues—the jury, of course, being in ignorance of the tender. If the judgment be for defendant, or for more than the tender, that is the end of the matter. But if the judgment be for less than the tender, a large deduction for costs is made from the judgment, and inures to the defendant's benefit. This has enormously reduced the volume of accident cases and has also curbed the often wildly extravagant demands and unjust results in such actions generally recognized as evils difficult to deal with.

In short, the system of Masters in England works admirably. It is entirely adaptable to American courts, the details and modifications which might prove necessary being fitted to local conditions, but in any such adaptation, the general purpose should be kept in view, namely, that when a case appears upon a trial list it shall have already been pruned of all non-essential preliminary details and is forthwith to be actually tried upon its merits; the court's time being too precious to be expended upon the subsidiary side issues.

CHAPTER XI

THE POLICE COURTS

CURRENT HEARINGS.

Upon arrest, a preliminary hearing is first held at a police station where, as in most English proceedings, the testimony, with anything the prisoner may say (after he has been warned of the consequence of self-incrimination) is carefully reduced to longhand writing and plays an important part at the subsequent stages of the prosecution.

The next step is the hearing before a Police Magistrate at Bow or Marlborough Streets, or at any one of the like courts in London which, although of minor importance, are dignified tribunals. The court room is entered by two small doors, one for the witnesses and audience, the other for officials and solicitors, and there is another passage leading from the cells through which the prisoners are brought to a dock. This dock, as in all criminal courts, is at the far end of the room from the magistrate. The prisoner

is thus isolated and can only communicate with his solicitor, if he has been able to retain one, by scrawling a note and passing it on to an officer.

The magistrate, appointed by the Crown or the Lord Chancellor acting in its behalf, is almost invariably a man of standing and repute, usually a barrister, whose ready dispatch of business shows great experience with crime, and whose kindness to the merely unfortunate testifies to his charitableness of heart. He wears no wig nor gown and is called in court, "Your Worship"; whereas judges of the High Court are called in court, "My Lord", and those of the County Courts, "Your Honor". All judges, however, are addressed in private life as "Mr." or, if they have one, by a title which is usually conferred upon judges of the High Court. Solicitors act for the more important prisoners but barristers are rarely seen and appear in ordinary street dress if at all.

The early morning run of business consists chiefly of the "drunks", divided nearly equally as to sex, and of persons arrested for begging and minor misbehavior. These cases are disposed of with great rapidity.

A woman, looking very silly, and with her millinery somewhat awry, is ushered into the

dock charged with being "drunk and disorderly".

Magistrate: "Do you admit it?"

Woman: "Hi hadmit hi 'ad a little too much, but deny being disorderly, Your Worship."

Police Constable: (sworn) "She was banging on the door of the Black Horse at 2 A.M. screamin' for drink. I cautioned her and then saw her repeat this at another closed 'pooblic', so I took her in charge."

Magistrate: (To an officer with a book of records) "Is she known?"

Officer: "No, Your Worship, she was never here before."

Magistrate: "Five shillings or five days."

As she is rapidly conducted through the passage and disappears in the direction of the cells, one hears called from official to official the words: "Five or five."

The next is an intelligent, elderly, but very shabby, man charged with begging. The police officer had testified that a lady gave the prisoner money and that he immediately entered the nearest "pooblic". The prisoner's explanation was that he had been given the shilling without his having asked for it, and that he had gone to the tavern to get bread and cheese, which he greatly needed, and a glass of beer. The magistrate

rather rebuked the policeman for referring to the visit to the public house as counting against the man, adding that anybody had the perfect right to do as he had. Then, addressing the prisoner, he said, kindly, that he was by no means sure that actual solicitation by words was essential to constitute begging and that his mere appearance was an appeal. It seemed as though the man was about to get off, when the inevitable question "Is he known?" brought the information that he had been in Court upon the same charge on February 19th, on March 5th and again the month following. The magistrate's manner quickly changed, as he recognized an old offender, "Three months hard labor," he said, and "three hard" was repeated like an echo down the corridor as the prisoner slunk back to the cells.

The next was a well-dressed young man, apparently a clerk, charged with being drunk and disorderly.

Prisoner: "It's quoite roight what the constable says."

Magistrate: "Seven shillings and sixpence or six days."

A voice down the corridor: "Seven and six or six."

A Subject for the Police Court

After the early business, which is dispatched with great rapidity, come the more serious cases, which, if well-founded, are to be held for trial. An American was charged with obtaining money and goods by false pretence. Soliciting advertisements from tradespeople for a book intended for Americans visiting London, which never was published; he had obtained money on account and at the same time, procured millinery and garments for a woman whom he introduced as his fiancée. He was represented by a barrister who would try his case if he were held for trial. The witnesses consisted of milliners and dressmakers who detailed the method of his operations. The magistrate referred frequently to the memoranda of their evidence, taken at the police station, and questioned them so as to elicit their testimony, which he wrote down in longhand. The defendant's barrister cross-examined and the magistrate added the substance of the cross-examination to the deposition which was finally signed by the witness, to be used by the trial judge as his guide, if the grand jury should find a true bill. During the examination, one was struck by the alacrity and glibness of the replies, as in all London courts of whatever degree. An American ear is impressed by the thought that possibly these people,

living in a densely packed community of five millions, all speaking one language, are particularly facile in the use of the mother tongue, unlike the English rustic who is apt to be taciturn and awkward of speech. One is also struck, as in all courts, by a certain ring of sincerity, an attitude of respect for the administration of law and the quick and cheerful co-operation of all concerned. The Englishman truly appears to the best advantage in his court, where he leads the world.

If the accused be held for trial by the magistrate, the next step, as with us, is the presentation of the charge to the grand jury. The grand jury either throw out the indictment or find a true bill, in which event a jury trial follows at the Central Criminal Court.

CHAPTER XII

THE CENTRAL CRIMINAL COURT;—THE OLD BAILEY

CURRENT TRIALS.

At the corner of Newgate and Old Bailey streets, near Fleet street and not far from Ludgate Hill, stands a modern building, officially known as the Central Criminal Court, but popularly called "the Old Bailey." It occupies the site of the ancient Newgate Gaol and Fleet Prison, where, for nearly seven centuries the criminals of London expiated their crimes. There they were tried and, if convicted, hanged on the premises, or—a scarcely better fate—thrown into Newgate Prison, which, from time immemorial, was so overcrowded, so ill-ventilated and so poorly supplied with water that it was the hot-bed of diseases designated as "prison fever." At a single session of court the fever had been known to carry off fifty human beings; not only prisoners, but such august personages as judges, mayors, aldermen and sheriffs.

The present fine structure is exclusively a court house to which prisoners are brought for trial and confined in sanitary cells beneath the court rooms only while awaiting the call of their cases. There are three courts: two presided over by judges called, respectively, the Common Serjeant and the Recorder, together with the Lord Chief Justice of England, or such other judge of the High Court as may be designated for the month, who comes from his civil work in the Strand Law Courts to try criminal cases at the Old Bailey. Each month, also, two or three sheriffs of the City of London are scheduled for the complimentary duty of attending their Lordships and entertaining them at luncheon.

The court rooms are rather small and nearly square. Like every London court, they have oak panelled walls, and excellent illumination from above by skylights; they are arranged with a high dais—on which are the chairs and desks for the presiding judge, the sheriffs, or for any guest—and they have the usual steep upward slope of the benches for barristers on the one side and for the jury on the other. Only the solicitors' table is at the floor level. This arrangement brings all the participants in a trial more nearly together than if they were distri-

buted over a flat floor. At the end of the room farthest from the judge is the prisoners' dock, a large square box, elevated almost to the judge's level. This the prisoner reaches by a stairway from the cells below (invisible because of the sides of the dock), accompanied by officers, and he stands throughout the trial—unless invited by the judge to be seated—completely isolated from his barrister and from his solicitor and can only communicate with his defenders by scrawling a lead pencil note and passing it to an officer. A small area of sloping benches, together with a very inadequate gallery, are the only accommodations for the public.

If the visitor happens to be a guest of the Court, he will be ushered in by a door leading to the raised dais and will sit at a desk beside the judge. His eye will first be arrested by a small heap on his desk of dried aromatic herbs and rose leaves and, while speculating as to the purpose of these, he will discover similar little piles on the desks of the presiding judge and sheriffs. He will also observe that the carpet of the dais is thickly strewn with the same litter. Vaguely it is suggested that the court room has been used over night for some kind of a horticultural exhibition and that the sweeping has been over-

looked. Later, his astonishment, however, is redoubled when enter the sheriffs and the judge each carrying a bright colored bouquet of roses or sweet peas bound up in an old-fashioned, stiff, perforated paper holder. The visitor ventures to whisper his curiosity and he is then informed that, in the former times, these herbs, and the perfume of fresh flowers, were supposed to prevent the contagion of prison fever; and that the ancient custom has survived the use of disinfectants and the modern sanitation of prisoners and cells.

The opening of court in the morning and after luncheon is a curious ceremony. The Bar and audience rise and, through a door corresponding to the one by which the visitor has reached the dais, enter the two sheriffs gowned in flowing dark blue robes trimmed with fur. Then comes the under-sheriff in a very smart black velvet knee breeches suit, white ruffled shirt, white stockings, silver buckled shoes, cocked hat under arm and sword at side. The sheriffs bow in ushering to his seat the judge, who is arrayed in wig and robe, which, in the case of the Lord Chief Justice, or one of the judges of the High Court, is of brilliant scarlet with a dark blue sash over one shoulder, or in the case of the Common Sergeant, is of sombre black. Each member of the court

carries the bouquet referred to and the whole group afford a dash of color strong in contrast with the dark setting. The judge, having seated himself in a chair—so cumbersome as to require a little track to roll it forward sufficiently close to the desk—the sheriffs dispose themselves in the seats not occupied by the judge or his guest, and, later, they quietly withdraw. They have no part in the proceedings, their only function being to usher in and out the judges, and to entertain them at luncheon—the judges being by custom their guests. The judge having taken his seat, the Bar and public do the same and the business begins. There are usually two such courts sitting at the Old Bailey—sometimes three of them.

At lunch time the sheriffs again escort the judges from their seats, and all the judges, sheriffs and under-sheriffs, and any guests they may invite, assemble in the dining-room of the court house for an excellent, substantial luncheon served by butler and footman in blue liveries with brass buttons, knee breeches and white stockings. The luncheon table looks odd with the varied costumes, the rich blues, the bright scarlets and the wigs of the party, who, no longer on duty, relax into jolly sociability. Indeed one

can not escape the impression that he has in some way joined a group of "supes" from the opera who are snatching a light supper between the choruses. These are some of the picturesque features of the Old Bailey which, at the same time, is the theatre of the most sensible and enlightened application of law to the every day affairs of the largest aggregation of human beings the world has ever seen.

While enjoying a cigar after luncheon with one of the under-sheriffs, the voice of the Common Serjeant or Recorder is heard at the door of the smoking room. Robed and armed with his bouquet, he smilingly inquires if there are no sheriffs to escort him into court. A hasty buckling on of sword, a snatching up of his bouquet and a little dusting of cigar ashes from his velvet knee breeches, prepares the under-sheriff for the function, and, preceded by the sheriffs in their blue gowns, his Lordship bringing up the rear, the little procession starts along the corridor and enters the door leading to the judges' dais. The under-sheriff shortly returns to finish his cigar but the guest tarries beside the judge.

The first case was a minor one—a charge of breaking and entering a shop and stealing some goods. His name having been called, the pris-

oner suddenly popped up into the dock at the far end of the room with police officers on either side of him. Asked if he objected to any of the jurors already seated in the box, he replied in the negative and the trial began. The junior barrister opened very briefly, merely stating the name, date, locality and nature of the charge. Following him the senior barrister gave the details at much greater length. These barristers were not, as with us, district attorneys or state prosecutors. They are either retained by the Treasury or, as the case may be, represent private prosecutors. The judge was fully conversant with the evidence, as he had before him the depositions taken at the Magistrate's Court.

In an English court, when counsel has finished the direct examination of a witness, he does not say, as we do, "cross-examine" or "the witness is yours", he simply resumes his seat as the signal for the other side to cross-examine. Sometimes, a pause of the voice simultaneously with a stooping of the barrister's head for a word of suggestion from the solicitor below, leads his opponent to believe he is seating himself and to begin to cross-examine prematurely.

Although in this case the plea was "not guilty," the charge was practically undefended, and a

prompt verdict of "guilty" followed. Then came the important query from the judge to the police as to whether the prisoner "is known"—was there a record of former convictions? Learning that there was not, a sentence to eighteen calendar months at hard labor followed a caution that if he should be brought again before the court, he would be sent to penal servitude. With a servile "If your Lordship pleases" he turned to dive down the stairs, and, as he did so, with a grinning leer, seized his left hand in his right and cordially shook hands with himself—a bit of a gesticular slang which led one to think that the police were not very well informed as to his previous experiences.

The next was a more important case. A clever but sinister-looking Belgian, the master of several languages, was charged with obtaining a valuable pair of diamond earrings by an ingenious swindle. Having a slight acquaintance with a dealer in stones, he telephoned that a friend of his was coming over to London from Paris to join his wife and desired to present her with a pair of earrings. If the dealer had suitable stones and would allow a commission, the Belgian said he would try to effect a sale for him. He, therefore, arranged that the dealer, at a fixed

hour the following day, should bring the stones to his lodgings for the Frenchman's inspection. The appointment was kept and the two men waited for some time for the Frenchman. Finally the latter's wife appeared and explained to the Belgian in French—which the Englishman did not understand—that her husband had been detained but would come by a later train, whereupon she withdrew, and the conversation was interpreted to the disappointed dealer.

Then the Belgian suggested that, if the dealer cared to leave the stones, he would give a receipt for them and would either return them or the money by half-past four. The dealer replied that although he was quite willing to do so, he had partners whose interest he must consult. The Belgian then produced a certificate of stock in some Newfoundland Company, saying that it was worth as much as the diamonds. The dealer consented to receive this as security and he then left. Just before half-past four he was called up on the telephone and told by the Belgian that he had made the sale and had received the money in French notes which he would have changed into English money. The dealer told him to bring the French notes, which would be acceptable to him. That, of course, was the last he ever saw of

the money, the diamonds or the swindler, until the latter was arrested some months later.

The leading nature of the direct examination, so marked in all English courts, was conspicuous in such questions as the following:

Q: "Did the defendant telephone you about 4.15?"

A: "Yes, sir."

Q: "Did you recognize his voice?"

A: "Yes, sir."

Q: "Did you send an assistant to the defendant's flat with a letter and was it returned to you unopened?"

A: "Yes, sir."

The Secretary of the Newfoundland Company having been called, was asked: "Were the shares in defendant's name formerly in the name of John Smith?" *A:* "Yes." *Q:* "Was there an order of court forbidding their transfer?" *A:* "Yes."

Two pawnbrokers testified that, shortly after four o'clock, the prisoner had brought the earrings to their shops and asked how much would be loaned upon them and that, the sum offered being apparently unsatisfactory, the Belgian took the earrings away.

Defendant's barrister: "My Lord, I submit, I've no case to answer."

The Court: "Oh, yes, you have."

Barrister: "Well, if your Lordship thinks so."

The defence was cleverer than the original swindle in that it did not attempt to deny the overwhelming evidence, but merely made the story tally with an ostensibly innocent explanation. The Belgian averred that he had himself been robbed by the Frenchman, with whom he had but a slight acquaintance gained at the Paris races. He said that the Frenchman had kept the deferred appointment and, though he admired the stones, he thought them hardly worth the price, whereupon the two had set off in a cab to obtain an opinion as to their value. If thus assured, he was to make the purchase and together they were to take them to his wife in a hotel near Piccadilly. As it was late in the day, they failed to find a French-speaking jeweller whom they sought, and it was suggested that, as pawnbrokers were very cautious in loaning, two opinions of that fraternity should be had. On stopping at the pawnbrokers' shops, the Frenchman, being ignorant of English, said there was no use of his going in as he would have to rely upon his companion's interpretation and might

as well sit in the cab. Thus, the visits by the Belgian alone to the two pawnshops and the inquiry as to the amount procurable as a loan, were duly accounted for.

According to the prisoner's story, the Frenchman, being satisfied, proposed to pay in French notes and the Belgian entered a public telephone booth to enquire of his principal if that would be satisfactory, leaving the jewels with the Frenchman in the cab. When he returned the cab was gone.

His intention having been to leave for the Continent the following day, the Belgian said he had already notified the landlord of his flat—which was apparently true—and had dispatched his effects in advance. So, supposing that the Frenchman had gone to Paris, he immediately followed on the evening train in the hope of identifying him en route, or of finding him somewhere in that city. He swore he did find him a few days later and caused his arrest, and that the French magistrate declined to hold him because the crime had been committed in England where there was no warrant out, and, hence, no demand for extradition.

The weakest point in this ingenious fabrication was the prisoner's failure to communicate with

the owner of the diamonds during the ensuing five months. This, and other discrepancies, having been easily laid bare on cross-examination, a verdict of guilty was quickly rendered.

The judge had hardly uttered the usual query whether the prisoner was known, before an alert police inspector replied, "He is an international swindler, well-known all over the Continent, wanted in Berlin for a job of 20,000 marks, in Paris for another of 30,000 francs and elsewhere."

Judge: "Suppose we give him a few months and allow the foreign police to apply for extradition?"

Inspector: "Well, Your Lordship, the trouble is that he claims to have been born in Paris of English parents and that he is, therefore, a British subject, and the French police will jolly well accept his statement."

Judge: "That's very awkward. We'll give him twelve calendar months and see what transpires."

CHAPTER XIII

AN IMPORTANT MURDER TRIAL

Amongst the murder trials on the "Calendar of Prisoners" appeared "No 38; Madar Lal Dhingra, 25, Student, wilful murder of Sir William Hutt Curzon Wyllie and Dr. Cowas Lalcaca." This referred to the cowardly assassination of an English gentleman who had devoted his life to Indian administration and to benefiting the native races of that country, and to the murder of an Indian doctor, who lost his life in an effort to save him. The tragedy, the news of which had profoundly shocked the world less than three weeks before, occurred during an evening reception at the Imperial Institute. The prisoner, a fanatical Indian student, was believed to have borne no personal animosity to his victim.

No one knew exactly when the case would be reached, but it had been expected for several days when, one morning, the Old Bailey, in

view of a possible disturbance by Indian sympathizers, was found to be carefully guarded by detectives. Except a small audience admitted by cards which were doubtless hard to procure and not transferable, the public, clamoring at the doors, were excluded from the Court, although one American lady, who appeared in one of the back seats, seemed to have had information and influence necessary to gain an entrée.

The barristers' benches, however, were so full that there was an unusual array of bewigged heads on that side of the court. The jury, already in place, and the small audience, waited in quiet but tense expectation. While one was idly noting the usual dried herbs and rose leaves on the desks and carpet of the judges' dais, the Lord Chief Justice seated himself and rolled his chair forward, a shaft of soft sun rays from the skylight accentuating his scarlet robe. The sheriffs bowed and took their seats at the side, and Dhingra's name was called.

Into the dock at the far end of the room popped the prisoner, guarded by two imperturbable policemen. He was a little, yellow youth with a Semitic or Oriental countenance, silky black hair much dishevelled and badly in need of the scissors, and eyes, so far as

they were discernible under his gold-rimmed spectacles, of glittering black. He wore an ordinary gray suit and stood with his right hand thrust into the breast of his coat, suggesting that he had concealed there some weapon or, perhaps, poison; but of course he had long since been disarmed and under careful guard. His was a meagre figure, by no means conveying to an observer his own conceited estimate of his personality. When he spoke, though posing as a hero and martyr, he revealed only a sullen, sulky and venomous disposition and the ferocity of his character was attested by the premeditated and treacherous murder which he had committed.

The Clerk of Arraigns having asked whether the prisoner pleaded guilty or not guilty, his reply was at first not understood because of his broken English and his quick, spasmodic utterance. So his answer had to be repeated, as follows:

Prisoner: "First of all, I would say these words can not be used with regard to me at all. Whatever I did was an act of patriotism which was justified. The only thing I have got to say is contained in that statement, which I believe you have got."

The Clerk: "The only question is whether you

plead guilty or not guilty to this indictment."

Prisoner: "Well, according to my view I will plead not guilty."

The Clerk: "Are you defended by counsel?"

Prisoner: "No."

There were three barristers for the prosecution, including the Attorney General who chiefly conducted the case. The Lord Chief Justice volunteered leave to the prisoner to sit down, which he did, appearing more diminutive than ever, in contrast with his guardians. The junior barrister having stated the names, the date and locality of the crime very briefly, the Attorney General opened the case for the prosecution in great detail, consuming a third of the ninety minutes which elapsed before sentence of death. In his opening, as is usual in England, he produced exhibits and read letters not yet offered in evidence.

In substance it was related that Dhingra came to England about three years before to study engineering and fell into the association of India House, a rendezvous in London of Indians of seditious proclivities. He lived in lodgings where he had few visitors and where, after the murder, was found a letter from Sir Curzon

Wyllie which was read in the opening speech and which stated that the prisoner had been commended to the writer's protection and offered to be of service to him while in England. The story was told of his procuring a license to carry a weapon, of his purchase of a Colt's automatic magazine revolver and another revolver, of cartridges and of a long dagger—all of which were produced by the speaker and the triggers of the empty pistols snapped to show the jury how they worked.

An account of his frequent practice at a pistol gallery for three months and up to the very afternoon of the day of the tragedy and the use of a target the size of a man's head, preceded an exhibition of the last paper target used, when four bullets out of the five had pierced the bull's eye. The speaker described how Dhingra had called his victim aside into a vestibule while Lady Wyllie proceeded down the staircase, how he fired four shots pointblank, which passed through Sir Curzon's head; how Dr. Lalcaca had tried to intervene and was shot for his temerity, and how, finally, an elderly English baronet had grappled with the murderer and succeeded in wresting the revolver from him and bearing him to the floor.

The witnesses were then called and examined with great rapidity, the judge restricting their testimony to essentials and checking both counsel and witness from the slightest digression. This seemed to be carried almost to an extreme, as an untrained witness often brings forth an important fact amid much irrelevant verbosity. At the end of the direct examination of the first witness, his Lordship asked Dhingra if he wished to cross-examine. The latter growled a negative but added that he had something to say, whereupon he was informed that he would have an opportunity for that later. Thereafter, when asked the same question at the conclusion of each witness' evidence, he merely shook his head.

The prosecution having rested, Dhingra was asked if he had any witnesses and replied that he had not. The Lord Chief Justice then informed him that if he had anything to say, now would be his chance, and asked whether he desired to speak where he was—from the dock—or from the stand. The judge of course referred to the difference between a mere unsworn statement which might be in the nature of a plea to the jury to add a recommendation for mercy to their verdict, or, sworn testimony which might go to the merits of guilt or innocence. It was apparent

that the prisoner, as he was without counsel, did not understand this question and, as well, that the judge did not comprehend his inability to grasp a distinction indicated in the question. Doubtless, as the prisoner was bound to be hanged—and he richly deserved it—the misunderstanding made not the slightest difference in this case, but one could not help feeling that the failure to provide counsel was a serious defect in the administration of justice.

Dhingra elected to remain in the dock and stated that he was unable to remember all he wanted to say, but that he had committed it to a writing which was in the possession of the police. This was then read by the Clerk but so falteringly owing to the manuscript being illegible, that the effect of the revolutionary diatribe was largely lost. The London *Times,* however, printed it the next day as follows:

"I do not want to say anything in defence of myself, but simply to prove the justice of my deed. For myself I do not think any English law court has got any authority to arrest me, or to detain me in prison, or to pass sentence of death upon me. That is the reason why I did not have any counsel to defend me. I maintain that if it would be patriotic in an Englishman

to fight against the Germans, if they were to occupy this country, it is much more justifiable and patriotic in my case to fight against the English. I hold the English people responsible for the murder of eighty millions of my countrymen in the last fifty years, and they are also responsible for taking away £100,000,000 every year from India to this country.

"I also hold them responsible for the hanging and deportation of my patriotic countrymen, who do just the same as the English people here are advising their countrymen to do. An Englishman who goes out to India and gets, say, £100 a month, simply passes the sentence of death upon one thousand of my poor countrymen who could live on that £100 a month, which the Englishman spends mostly on his frivolities and pleasures.

"Just as the Germans have got no right to occupy this country, so the English people have no right to occupy India, and it is perfectly justifiable on our part to kill an Englishman who is polluting our sacred land.

"I am surprised at the terrible hypocrisy, farce, and mockery of the English people when they pose as champions of oppressed humanity such as in the case of the people of the Congo and of

Russia, while there is such terrible oppression and such horrible atrocities in India. For example, they kill 2,000,000 of our people every year and outrage our women. If this country is occupied by Germans and an Englishman, not bearing to see the Germans walking with the insolence of conquerors in the streets of London, goes and kills one or two Germans, then, if that Englishman is held as a patriot by the people of this country, then certainly I am a patriot too, working for the emancipation of my Motherland. Whatever else I have to say is in the statement now in the possession of the court. I make this statement, not because I wish to plead for mercy or anything of that kind. I wish the English people will sentence me to death, for in that case the vengeance of my countrymen will be all the more keen. I put forward this statement to show the justice of my cause to the outside world, especially to our sympathizers in America and Germany. That is all."

His Lordship then asked the prisoner if he wished to say anything more.

The prisoner at first said "No", but just as the Lord Chief Justice was commencing to sum up the case to the jury, Dhingra said there was another statement on foolscap paper.

His Lordship: "Any other statement you must make now yourself."

Prisoner: "I do not remember it now."

His Lordship: "You must make any statement you wish to the jury. If there is anything, say it now."

Prisoner: "It was taken from my pocket amongst other papers."

His Lordship: "I do not care what was in your pocket. With what you had written before, we have nothing to do. You can say anything you wish to the jury. What you have written on previous occasions is no evidence in this case. If you wish to say anything to the jury in defence of yourself, say it now. Do you wish to say anything more?"

Prisoner: "No."

The Lord Chief Justice then summed up the case to the jury in a charge occupying but six minutes. He said that the evidence was absolutely conclusive; that the jury had no concern with any political justification for the crime, for if anything of the kind were considered it would be in the carrying of the sentence into effect—with which the jury had nothing to do—that this was an ordinary crime by which a blame-

less man, who had devoted himself to the public service and had done much for the natives of India, had lost his life, and that it was quite plain there had been premeditation. His Lordship added that there was nothing which could induce the jury to reduce the crime from murder to manslaughter, nor was it suggested that Dhingra was insane, so that if the jury believed the uncontradicted evidence the only possible verdict was one of wilful murder.

Without leaving the box the jury put their heads together and, in less than a minute, the foreman arose and uttered the fateful word "Guilty."

There are no degrees of murder in England, but in cases where a weak intellect or greatly extenuating circumstances render hanging too severe a penalty, the Home Secretary may exercise a power of commutation. Thereupon Dhingra having been ordered to stand up, the clerk addressed him as follows: "You stand convicted of the crime of wilful murder. Have you anything to say for yourself, why sentence of death should not be passed on you according to law?"

Prisoner: (with a snarl) "I have told you once I do not acknowledge the authority of the Court. You can do whatever you like with

me—I do not care. Remember, one day we shall be all-powerful, and then we can do what we like."

Then followed absolute silence for two minutes—a silence in which the breathing of persons near was audible.

Slowly the Lord Chief Justice lifted from his desk a piece of black cloth. It was the "Black Cap." One naturally thinks, from its name, that this is a kind of headgear corresponding to the shape of a man's head. On the contrary, it looks like a piece of plain limp cloth, a remnant from a tailor's shop, about a foot square, which the judge places on the top of his wig, letting it rest there quite casually and perhaps at a rakish angle, the four corners hanging down and the whole producing a somewhat ludicrous effect. Neither judge, jury, nor audience, rose when sentence was about to be pronounced, but all remained seated, except the prisoner, who stood in dreary isolation, flanked by his stalwart guard, at his elevated station in the dock. His Lordship, the dignity of whose well-modulated voice contrasted strongly with his comical head covering, slowly addressed the prisoner as follows:

"Madar Lal Dhingra, no words of mine can have the slightest effect upon you, nor do I in-

THE SENTENCING OF DHINGRA

tend to say anything more than to point out to you that you have been convicted upon the clearest possible evidence of the brutal murder of an innocent man. The law enforces upon me to pass the only possible sentence in such a case."

The sentence was that the prisoner should be hanged by the neck until he was dead and be buried at the place of execution.

The Chaplain, in his robes, having somehow appeared at his Lordship's side, added: "Amen. And may God have mercy upon your soul."

Immediately after the dread words had been uttered, the prisoner saluted the grave judge by a salaam, bringing the back of his hand to his forehead, and said in a manner, the impertinence of which deprived his words of dignity: "Thank you, my Lord. I am proud to have the honor of laying down my life for my country. I do not care."

Counsel representing the relatives of the condemned man then arose and said that he was instructed to say that they viewed the crime with the greatest abhorrence and wished to repudiate in the most emphatic way the slightest sympathy with the views and motives which had led to it, adding, on behalf of the father and family, that there were no more loyal subjects of the Empire

than themselves. His Lordship replied that, while the course might seem somewhat unusual, yet, having regard to the wicked attempt at justification in some quarters, he was glad for what had been said on behalf of the members of the family.

Dhingra and his guards then disappeared from the dock and in a few moments the Lord Chief Justice and his escort, as well as the small audience, had withdrawn, leaving the court room deserted except for a newspaper reporter who was completing his notes. And so the drama closed.

One was told that the youthful student would probably be hanged in a fortnight from the following Tuesday—the trial having taken place on a Friday—as ancient custom entitled the condemned man to three Sundays of life after sentence.*

The spectacle of this little, lonely, misguided, yellow man, prompted partly by fanaticism but largely by vanity, having braved the whole power of mighty Britain in its proud capital to exploit his chimerical views, caught in the meshes of a law he hardly understood and hemmed in on all sides by its remorseless ministers, was deeply

*He was hanged three weeks from the following Tuesday.

interesting and somewhat calculated to excite sympathy, until one's reason summoned the significance of the treacherous murder and the picture of a fair Englishwoman going out into that London night a widow.

While the result of this trial was justice, swift and unerring, to an American observer it seemed odd and scarcely a fair practice for a man to be tried for his life unrepresented by counsel learned in the law. Although the case was plain, nevertheless, with great respect for the admirable administration of the law in England, it must be remarked that innocent persons,—who, even if not mentally defective, may none the less be far from clever and who are necessarily inexperienced, and may perhaps lack the intelligence or means to retain counsel—ought not to be permitted by the court to pit their wits against an able officer of the crown, the stake being their own necks. To excuse the omission on the ground of the obvious guilt and callousness of the prisoner, is not a satisfactory solution, because it would involve prejudging the issue to be tried. The proper and humane course is followed in the United States—the appointment by the court of counsel for an undefended prisoner

—for it guards against the possibility of terrible mistakes.

From a technical point of view, the "leading" nature of the direct examinations, so noticeable in English courts, was especially conspicuous in that this was a murder trial where no departure from the recognized customs would have been permitted. One's ear grows accustomed to questions which put the answer into the mouth of the witness and require merely a monosyllabic assent; and one waits in vain for the objection which, at home, would follow such infractions of the rules of evidence as thunder succeeds lightning. In the Dhingra trial, for instance, the Attorney General did not scruple to ask such questions as the following:

Q: "Did you happen to look through the doorway and into the vestibule and see the prisoner speaking to Sir Curzon Wyllie and did you see him raise his hand and fire four shots into his face, the pistol almost touching him?"

Q: "Did you see Sir Curzon Wyllie collapse?"

Q: "Then, was there an interval of some seconds and then more shots?" (These killed Dr. Lalcaca.)

Nor did he hesitate to put such questions to another witness as:

Q: "Did you hear the noise of four shots and did you then look and see the prisoner and did you see him shoot again?"

A police officer was asked:

Q: "Did you examine the pistol and find one undischarged cartridge only?"

Q: "Had the other pistol six undischarged cartridges in it?"

Q: "Did you find two bullets similar to these in the wall?"

To such an extent was leading carried in the Dhingra trial that occasionally the answer did not follow the lead, thus:

Q: "Did you ask him 'What is your name and where do you live?' "

A: "I can't remember what I asked him."

The probable reason for the great latitude in this regard is the fact that apparently nothing in an English trial is a surprise—except to the jury. The court and counsel, knowing practically all the evidence beforehand, are extremely lenient.

Not only are leading questions common but also questions asking for conclusions—not for facts from which the jury may draw their own deductions. Thus, in the Dhingra trial, a doc-

tor, who was sent for after the murder, was asked: "Did the prisoner seem calm, quiet and collected?" A plaintiff, perhaps, will be asked: "How came the defendant to write this letter and what was its object? Did he consider himself remiss?" Of course an American lawyer would successfully contend that a letter speaks for itself, while a man's estimate of his own position could only be put in evidence by repeating his admissions in that regard—not by asking his opponent how he regarded himself.

In favor of the practice of asking witnesses for conclusions—a practice which many American lawyers have found invalidates parts of testimony taken in England for use here—much may be said. To ask a witness the mental attitude of a person, whom he heard talking a year before—whether he was angry, or joking, for example—is to ask an answerable question; but to require him to repeat the exact words, is to demand an impossibility. In replying to either form of inquiry the witness may be honest or the reverse, so that the chances of intentional misinformation are equally balanced, but an attempt at verbatim repetition nearly always requires, consciously or unconsciously, a draft upon the imagination. It seems that our rules of evidence in

this regard might, perhaps, be cautiously relaxed with advantage, to accord more with practical experience.

An English criminal trial is quick, simple and direct. Dhingra, for example, whose crime was committed on July first, was sentenced on the twenty-first of that month and was hanged on August seventeenth—all in forty-seven days. The simplicity and directness of such trials is due to the absence of irrelevant testimony and imaginative arguments; these, counsel scarcely ever attempt to introduce—so certain is their exclusion by the judge. Thus, the real object of all punishment—its deterrent effect upon others—is greatly enhanced because it is swift and sure. The public, moreover, are usually spared the scandal and demoralizing effects of prolonged, spectacular and sensational trials.

Until a short time ago any person convicted in an English court was without appeal—the rulings and sentence of a single judge were final—but this manifest injustice has lately been cured by a law granting the right of appeal. It is too soon to estimate the effect of this change, but the prediction may be ventured that the ancient habit of regarding criminal judgments as conclusive, together with the saving common sense which

characterizes all English courts, will probably prevent any radical departure from the present methods, which have much to commend them.

Comparison with American conditions is most difficult because, besides the United States courts extending for certain purposes over the whole country, there are forty-six absolutely separate sovereignties whose administration of criminal law, unless in conflict with the Constitution of the United States, is as independent of the rest of the world as that of an empire. Consequently, while differences exist in methods and results, the remarkable fact is that they are, upon the whole, so similar, when only a common tradition and a fairly homogeneous public opinion serve to keep them from drifting in diverse directions.

The administration of criminal law by the United States Courts deals chiefly with the trial of persons accused of murder on the high seas, counterfeiting, forgery, smuggling or postal frauds, defaulting bank officials and, very lately, corporation managers charged with favoritism in freight rates, or with the maintenance of monopolies affecting interstate commerce. Throughout the length and breadth of the land it is prompt, thoroughly dignified, vigorous and fair; indeed, its excellence, as a whole, suffers little if at all by

comparison with the best English standards, which have been perfected only by centuries of experience in the highly concentrated population of a small Island.

But turning to the individual States, all comparisons must depend upon locality. New York, the landing place, that threshold of real America, with a predominating foreign population; the western frontiers of civilization, and the South, with its peculiar racial conditions, suffer by comparison with British standards far more than would one of the orderly communities composing the greater part of the Republic.

Recent mal-administration of criminal law in New York constitutes a subject of national mortification, but the existence of this sensitiveness is the best of reasons for believing that time will bring an improvement. Unfortunately for the good name of the country, foreigners do not comprehend, and can hardly be made to appreciate, that the instances of private assassination in that city followed by trials, which, whether owing to a vicious system of practice or to judicial incompetency, excite the indignation and ridicule of the world, are not typical of America but are expressions of purely local and probably temporary conditions. Foreign critics should be told that

New York is not America, as many of them assume, and that temporary and local lapses do not prove a low standard. They may also be reminded, as showing that human justice is fallible, that even in London if a man walks into an Oxford Street department store, lies in wait for the proprietor against whom he has a grievance and blows out his brains, although he will be convicted in a trial occupying but three hours, yet the Home Secretary may intervene and prevent his hanging, upon a petition signed by tens of thousands of sentimentalists moved by the rather illogical fact that his wife contemplates an addition to a thus celebrated family.

In the far West, criminal practice is probably neither better nor worse than in any other rough frontier of civilization where men must largely rely upon their own resources, rather than upon the government, for the protection of their lives and property. Conditions in the South are so peculiar, owing to the sudden elevation to a legal equality of an inferior race which is in the majority, that no comparison with any other community is possible. Without in the least condoning existing conditions, it may even be said that lynching, unlike private assassination, involves some degree of co-operation and is the expression of

public, rather than of individual, vengeance. The theatre of these outrages is, moreover, sparsely settled, beyond large cities or centres of education, and still retains some of the features of a frontier.

Throughout much the largest area, however, constituting the solid civilization and containing the bulk of the population of this immense country, no such conditions exist. On the contrary, crime is met with that steady and impartial justice, inherited from England, which neither partakes of the police oppression of continental countries, nor lapses into the barbarism of the exceptional localities above referred to. To commit deliberate murder in one of the eastern States, such as Pennsylvania, or Massachusetts, or in one of the great commonwealths of the middle West, means sure and reasonably speedy hanging.

But, bearing in mind the difficulty of accurate comparisons between such diversified sections and a compact unit like England, and endeavoring to arrive at a general estimate, it must be conceded that America, as a whole, has even more to learn from England's criminal, than from her civil, courts.

CHAPTER XIV

LITIGATION ARISING OUTSIDE OF LONDON

LOCAL SOLICITORS—SOLICITORS' "AGENCY BUSINESS"—THE CIRCUITS AND ASSIZES—LOCAL BARRISTERS—THE COUNTY COURTS—THE REGISTRAR'S COURT.

As has been said, solicitors are to be found in every town in England, whereas barristers, with minor exceptions to be noted, all hail from the London Inns of Court. People living in the country or in provincial towns, especially the larger ones, such as Liverpool and Manchester, of course consult local solicitors. If litigation is contemplated, the solicitor advises his client and conducts the sparring and negotiations which usually precede a lawsuit. But when actual warfare opens, the provincial solicitor generally associates himself with a London solicitor who is known as his "agent"; and hence "agency business" constitutes a considerable portion of the practice of a large firm of

town solicitors. The Manchester or Liverpool solicitor does all the work and receives the fees up to the time he sends the "proofs" to the agent —that is, the documents, statements of witnesses reduced to affidavits, and the other items of evidence—and dispatches the witnesses to the trial in London, which usually however, he does not attend himself, although, of course, he sometimes does so. The London solicitor retains the barristers, and is thereafter in complete charge of the case. The newspaper reports of trials of cases from the provinces, after giving the names of the barristers, always mention the London solicitor as agent for the country solicitor whose name also appears. The fees are shared from the time of association; one-third to the country, and two-thirds to the town solicitor. This is not unlike the manner in which our lawyers handle business in States other than their own—but it is much more systematized. If, however, the provincial solicitor prefers to await the Assizes (which he may, except in divorce, probate, equity and some other kinds of business) he may bring his action in the High Court, sub-offices of which are available throughout the country for the issuance of writs, and, having retained a barrister, may try the case in his own town when the judge of the High

Court comes down from London thrice a year on circuit.

These Circuits of the High Court are arranged with regard to the volume of business and the contiguity of centres of population, without reference to county boundaries, and the same judge is rarely designated to repeat his visit to a circuit until it is reached again in regular rotation. To some circuits, like the Northern, where the business is very heavy, two judges are sent. At these Assizes, both civil and criminal business is handled, and, if there be two judges, one court room is devoted to the former and the other to the latter.

Every London barrister, early in his career, joins a circuit. He usually selects one where he may be somewhat known to the solicitors, and where, perhaps, his family have property or associations. Formerly and, in fact, long after the advent of steam, judge and counsel "rode the circuit"—as was done in the early days of our own county Bars—and indeed, within the memory of barristers still in middle life, a horse van used to stand in one of the Temple squares to receive the luggage, papers and books of court and Bar for the circuit. Each circuit has its "mess" with interesting traditions of midnight carousals and

records of fines of bottles of port inflicted upon members for various delinquencies. The modern mess, besides procuring special rates at the hotels, constitutes a sort of itinerant club; rendering possible a discipline for breaches of professional propriety by expulsion or denial of admission, which is the most drastic punishment short of disbarment.

A few barristers, and their number is increasing, reside in large towns other than London and practice exclusively at the Assizes and in the county courts—of which something will be said later. They are known as "locals". If successful, however, they gravitate to the source of the High Court—London. Thus the local solicitor, if he decide to eschew London and an agent and await the Assizes, has a considerable Bar from which to pick his man.

A barrister never accepts a brief in a circuit other than his own unless the solicitor has also briefed, as his associate, a junior who is a member of the circuit. To do so would be a gross breach of etiquette. But if this unwritten law be duly observed, the barrister who is a stranger here, although a daily colleague in the London courts, is immediately received with open arms and made an honorary member of the mess.

Court and Bar having reached and disposed themselves in an Assize town, as a flock of birds settle in a convenient cover, a transplantation of a London court is effected until the disputes of the neighborhood are resolved. An observer can find no difference in personnel or general aspect, except perhaps, that the provincial policemen at the doors are not so polite and patient as the London "bobby"—that marvel which excites the envy, admiration and despair of conscientious ministers of authority in the rest of Christendom.

If an action involve no more than £100, a solicitor may seek the County Court—even in London— for there is such a court for the county of London. The advantage in so doing is chiefly in the smaller costs, which are a serious matter to all English litigants, and almost prohibitive to the poor. The judge of a county court must be a barrister of at least seven years standing and generally hails from London. He is appointed by the Lord Chancellor and receives a salary of £1,500. His title in court is "Your Honor", as distinguished from a judge of the High court, who is addressed as "My Lord" or "Your Lordship," and from a magistrate, who is called "Your Worship."

In the county courts, solicitors "have audi-

ence", that is, they may, equally with barristers, address the court and jury; in other words, they may be the actual trial lawyers, whereas, in the High Court barristers alone are heard. In addressing the court, they must wear a black gown, but no wig. Barristers, except locals, are infrequently seen in the county courts; the amounts involved scarcely warrant retaining them. But, for some years, the tendency has been to increase the limit of jurisdiction of these courts and their importance is steadily growing. In this connection it may be mentioned, too, that agitation appears to be making some progress for removing all limitation of the jurisdiction of the county courts with, however, a right to the defendant to remove a cause to the High Court when more than a certain sum is involved, thus creating a sort of solicitor-advocate. But the outcome of all this is, at the moment, problematical. At present, to prevent solicitors developing into pure advocates even in the county courts, a law forbids one solicitor retaining another to conduct the actual trial.

The Registrar's Court in a great town, like Birmingham, will be found in the county court building. The court room is large, but usually contains only a few people, of the lower class, and

the registrar, in black gown and wig, sits on a raised dais. In the High Court, the American observer has been accustomed to associate a gown only with the barrister—never with the solicitor. In the county courts, however, he has seen solicitors practicing as advocates, in minor cases, and wearing gowns; but until he visits a registrar's court he has never seen a wig except upon the head of a barrister or of a judge; and all judges have once been barristers. He is therefore surprised to learn that, notwithstanding his attire, the registrar is a solicitor, appointed to his position by the county judge.

Beside the registrar stands a man who very rapidly passes to him numerous printed forms upon which the registrar places a figure or two, such as "4/6" or "7/6". This is done almost as fast as one would deal a pack of cards. Occasionally, there is a pause, a name is called and some one from the audience steps forward; whereupon brief testimony is taken as to some small debt, claimed upon one side and denied upon the other. Judgment for plaintiff follows in nine cases out of ten, and then inquiry is made by the registrar whether the defendant—or her husband, if she be a woman—has work or is unemployed. A figure is then placed on

the printed form which is added to the pile.

The business dispatched is that of some large retail tradesman. Upon payment of a small fee in the clerk's office, summonses have been obtained which have been served on the debtors by a policeman, and, in most cases, the defendants have signed their names admitting the debt. The figures 4/6, 7/6, etc. signify the order of the court, that 4 shillings and 6 pence, or 7 shillings and 6 pence, shall be paid monthly until the debt is liquidated. In this way, the time of a defendant who admits the debt is not diverted from his work to attend court. The claims are fixed for hearing in batches of 100 every half hour of the court's sitting, when, if not admitted in writing, a short trial of the contested cases ensues. In this way about 400 cases a day are readily disposed of.

Payments are made in the clerk's office and each payment is endorsed on the summons. If the debtor falls out of work, an application is made, invariably with success, to suspend the payment until idleness ceases. The costs are trifling and the whole system works admirably. It is a prompt and businesslike manner of enforcing small obligations with a minimum of loss and delay.

CHAPTER XV

GENERAL OBSERVATIONS AND CONCLUSION

It is the office of the courts to administer written laws enacted from time to time in response to the popular mood. They also—and it is the more important function—discover and declare the principles of natural justice which, in the absence of written law, govern the decision of a controversy. These deliverances, constituting the common law, rely much upon precedents which, however, are not followed slavishly, but are continually being modified—sometimes abruptly—in harmony with prevailing sentiment. Thus, the law expounded by the courts is ever changing and it slowly follows public opinion.

Both the public opinion and the law of England were, for generations, characterized by the quality of conservatism. The various reform acts, starting in 1832, marked the advent of an epoch of individualism which, lasting for over fifty years, made England the land where per-

sonal liberty and private property were perhaps safer than ever before in the world's history. It was a country where government's chief concern was to furnish irreproachable courts, competent police and few but honest civil servants, so that each man might pursue happiness after his own fashion with the least possible interference, yet with complete confidence that he could assert his rights effectively when invaded. Hence it was that America learned to look to England for precedents.

All this is changing. The substitution of the doctrines of collectivism for those of individualism began in 1885 and it proceeds rapidly in many directions. The socialistic harangues one hears from vagabonds mounted on benches in Hyde Park are delivered without interference by the police. The spreading of discontent by paid agitators proceeds at the market crosses and in the taverns of the villages between elections. Later the politicians appear and solicit votes for impossible schemes, an ever increasing proportion of which are actually adopted by Parliament and of which the laws regulating liability for personal injuries, attacks upon land and other forms of property, old age pensions and the methods of public education, furnish typical examples.

Sidewalk Socialism—Hyde Park

The first Workingmen's Compensation and Employers' Liability Acts were tentative steps, but laws quickly followed extending the liability and reducing the defences, particularly in the matter of contributory negligence. Finally, a law recently went into effect making every man liable for an injury sustained by any person—not necessarily his servant—while in his house or factory or on his land or ship, irrespective of any fault on his part and notwithstanding the contributory negligence of the injured person, unless the latter is intentional—suicidal. In addition, the last Act created another and unheard of form of liability for an employer, requiring him to compensate his servant if the latter falls ill or dies of an "industrial disease" (a list of which diseases was appended to the Act) and with the extraordinary provision that, having paid the compensation, the employer may sue any former employer for the amount, if he can prove the servant actually contracted the complaint in the earlier service and within ten years.

Of course universal accident liability insurance followed, the cost of which must be borne by the proprietor, and, if he is a manufacturer, eventually by the consumer. As may be imagined, such laws give rise to surprising results. The report

of one of the great accident liability insurance companies, made shortly after the passage of this law, exhibited, for example, the recovery of damages by a domestic servant, who, while eating a meal, had swallowed her own false teeth; another had contrived to swallow a curtain hook; a third was burned by the bed clothes taking fire from a hot iron which she had wrapped in flannel for the purpose of warming herself. The manageress of a laundry had her hands poisoned by handling copper coins. A footman was bitten while attempting to extract a cat from the jaws of a dog; a nurse-maid was burnt by letting off fire works in the back garden at a private celebration of the servants during the master's absence, and a cook had her eyes scratched by the house cat. Such absurdities show the trend of modern English legislation on the subject.

A glance at an English landscape with its panorama of endless turf and forest and comparatively small areas of cultivation, in marked contrast with the minute utilization of every inch on the Continent, and the reflection that England produces only a portion of the food consumed in its crowded towns, should leave no one surprised at an agitation to modify the existing conditions, which led to continued assaults upon

all forms of possession, whether of real or personal property. Acts of Parliament followed each other in quick succession depriving land owners of their holdings to inaugurate chimerical building schemes; giving rent-payers power to condemn and forcibly purchase dwelling houses; attacking property other than land by taxing the inheritance of money so heavily (on a sliding scale of percentages increasing with the size of the estate), as to approach the socialistic ideal that two deaths shall mean the absorption by the State of any large property and that no man shall enjoy a rich grandfather's accumulations; levying upon the living wealthy by ever increasing income taxes, with a like sliding scale, operating upon them alone, while exempting the poor. To this almost confiscatory taxation no limit seems to be in sight.

Old age pensions—one of the most startling novelties of the collectivist—are doubtless economically impossible and morally pernicious unless required to be contributory on the part of those who may later claim them, so that they constitute a system of compulsory saving and insurance, as is the plan in Germany where socialism is at least somewhat scientific. But it remained for the once conservative England to inaugurate the

distribution of universal alms without any comprehensive plan for raising the money—the weekly dole to be inevitably increased and the age limit lowered as the exigencies of vote-seeking politicians render expedient.

No one now questions the propriety of a Government providing free education for children, but in England a father, no matter how well qualified, may now be prosecuted for educating his child himself rather than sending him to a Government school to be fed as well as taught.

At the Marylebone Police Court a well known journalist and writer on education was summoned by the Education Department of the London County Council some time ago for neglecting to send his four children to school. He was, himself, an old and experienced teacher with credentials from one of the colleges of Cambridge University. He did not believe in sending his children to school until they reached the age of ten or eleven, but meanwhile he taught them himself, *viva voce* in the open air, according to the system of Froebel and Pestalozzi, and endeavored to make education a delight. This was the father's chief occupation and he devoted as much time as possible to training all the mental faculties, without exhausting the nervous force or injuring the

physical health, of his children. The eldest, a boy of fourteen, had contributed an article to one of the leading magazines which was pronounced by a competent editor of another periodical to be an extraordinary effort for a boy of his age. It appeared that he knew Shakespeare well and was in the habit of quoting him and other poets, but that his brother, aged eleven, preferred Wordsworth. He considered the English language "awkward," French "euphonious" and German "rationally spelt." It was rather a relief to find another brother, aged nine, who was deep in "Robinson Crusoe." A school-attendance officer, however, had reported that the children did not attend the elementary schools and the magistrate imposed fines upon the father, but, upon it appearing that he had no property, he was sentenced to imprisonment for seven days in respect of the Shakespearean, and five days each to cover the lover of Wordsworth and the student of Defoe. A month later the father was summoned before a different magistrate in the same police court who fined him in respect of the youngest child and adjourned the hearing in order that the other three might be examined by a government inspector to ascertain whether they were being efficiently educated. This epi-

sode may not have been typical, but that it was possible in modern England illustrates how out of date is the old-fashioned conception of the personal liberty and freedom from governmental intrusion which once characterized that Island as distinguished from the Continent.

These are but examples of a series of surrenders to the proletariat, which have practically delivered over the general Government of England to the collectivists; while the education and training of many of the party managers who are responsible for it, renders incredible the excuse that they may be only fanatics.

Simultaneously, municipal socialism has spread in a manner affecting the public even more intimately. Over three fourths of the Councils—County, Town, Urban District and Rural District—are engaged in municipal trading of various kinds, operating inefficiently and generally at a loss, such enterprises as golf links, steamboats, concert halls, motor busses, markets, trams, bath houses, gas works, libraries, telephones, milk depots, electric lighting, lodging houses, building operations, insurance—and a host of other undertakings heretofore left to private initiative.

All this means an ever increasing army of

officials, agents and inspectors. The interference of a paternal government is threatened or felt in every detail of existence. The people have learned to agitate collectively for advantages to be taken from some classes and distributed to others. Without a constitution (for the so-called English Constitution is but a misnomer for former laws and decisions which are subject to constant repeal and alteration) and without a Supreme Court capable of declaring wild legislation to be unconstitutional—for every act of Parliament becomes a law which can never be challenged in any court—there is no brake to retard, and the politicians of all shades are left free to compete in casting one vested right after another to the mob in quest of votes.

The most serious effect of all this is, probably, the tendency to weaken that sturdy self-reliance upon individual effort which has always characterized Englishmen, and the encouragement of an attitude of leaning upon the Government and of looking to legislation to remove all difficulties. No popular disturbance is impending—it is unnecessary, for the revolution progresses smoothly and the whole country is adjusting itself to the new order of things. The possessors of property seem singularly resigned, or at least inar-

ticulate, and submit almost in silence to spoliation. Such opposition as exists takes chiefly the form of party controversy upon details, and criticism by each faction of the steps of the other. Few seem to realize how far the country has departed from its former standards or that the most moderate proposals of to-day were radical yesterday.

It is a great race, this Anglo-Saxon, and it has shown wonderful capacity to govern itself in the past. It may prove to be wisely meeting half way an approaching avalanche of world-wide socialism destined to modify the existing order of society. Or can it be that England has seen its best days?

One thing, at least, is sure—the United States is at the moment infinitely more conservative than England. Both are pure democracies, and therefore if the people should be resolved to abolish the rights of property as we at present know them, it would inevitably be accomplished. That the majority are really of that mind in either country is more than doubtful; but in England the politicians seem to be destroying that which it has taken centuries to build up, whereas in America this could not happen unless the con-

viction was so widespread, determined and permanent, as to accomplish what is apparently impossible—the radical amendment of the Constitution.

This digression into the field of politics is only relevant in its possible effect upon the courts. They, at present, necessarily exist in an atmosphere of confusion and of constant annihilation of rights. The head of the whole administration of law, the Lord Chancellor, is a political appointee changing with the parties. He appoints the other judges, the King's Counsel and, directly or indirectly, he is the great source of legal advancement. True, he has for a long time been selected from the leaders of the Bar so that he has been professionally well qualified. But this was not always the case and it is not necessarily a permanent condition, especially in a country passing through such fundamental changes.

Time alone will show whether these violent shocks will disturb the balance of the scales of justice. For the future, realizing that England is no longer conservative, but is now the land of startling experiment, it would be at least prudent to accept its political and legal precedents with caution.

One sometimes hears it said that we have too many judges, and the argument is apt to be urged by the assertion that the number in a large city is as great as in all England. The natural inference is that our judges work less effectively.

No statement could be based upon falser premises. The roll of judges in the High Court is, indeed, a limited one and, as they try small as well as large cases, the impression might follow that they constitute the whole judicial force of England. The fact, however, is quite the reverse.

Taking at random the daily Official Cause List for London there will be found on a given day sitting at the Law Courts in the Strand alone, twenty-one judges of the High Court, eight masters, seven Chancery registrars, twelve masters in Chancery, three official referees, two registrars in bankruptcy and one official presiding over "companies winding up"—exactly fifty-four men simultaneously performing judicial duty in one building. Each of these is holding what is practically a separate court and his title is of no significance. When one remembers that at the same time the House of Lords is sitting at Westminster, the Judicial Committee of the Privy Council in Downing Street, the four

Criminal Courts at the Old Bailey, more than twenty police magistrates at Bow Street and elsewhere, and County Courts, at Bloomsbury, Clerkenwell, Edmonton, Marylebone, Shoreditch, Southwark and Westminster, some idea may be formed of the number of judges and courts always at work in the metropolis.

Innumerable courts are also sitting in the provinces, which, if less important, serve to relieve the metropolitan judges. The justices of the peace number in many counties three or four hundred and in one county about eight hundred, although most of them never attend and the work is done by comparatively few. They sit singly as committing magistrates and in groups at petty sessions and at quarter sessions. There are also a large number of borough criminal courts presided over by a recorder. Besides, the county courts are over five hundred in the aggregate, though there are not so many county judges, for the smaller courts are grouped into circuits. Finally, there are the Assizes of the High Court coming down periodically from London to try causes, both criminal and civil, all over England.

Thus the little Island fairly bristles with tribunals and teems with judges and any criticism of American judges or of American judicial

methods by such comparison would only be possible in ignorance of the facts.

In America, litigation begins in the court room; in England, it ends there. American proceedings tend to be somewhat formal, conventional, diffuse and dilatory. Pitfalls and traps are occasionally laid by astute practitioners, which embarrass the side really in the right and delay a conclusion upon the merits. Much is incomprehensible to the laymen concerned except the result.

English legal proceedings on the contrary are colloquial, flexible, simple and prompt, thoroughly in touch with the spirit of the times and with the ordinary man's every-day life.

The legal decisions of the two countries are probably of equal value, and are held in mutual respect. Neither, perhaps, could claim any superiority over the other in its legal results, but in methods, England at present is far in advance.

This was not always so. Up to 1875 the English courts were most slow, expensive and unsatisfactory. But in these thirty-five years, reforms in methods have so progressed, step by step, that the most important action can be tried, a judgment given, appeal taken, argued and

orally decided as counsel sit down—all in ninety days. The details of these improvements are too technical for the present occasion; suffice it to say that they are characterized by the utmost simplicity, and many of them are capable of adaptation with modifications to American conditions.

In America, the Bar is almost unorganized. It has little voice in the selection of the judges, of whose qualifications the politicians have no knowledge; it is weak in disciplining and purging itself and in commanding public respect for its rights; its standards of professional propriety are not clearly enough established, although great improvement is noticeable in all these respects. In England, the Bar is well organized and governs the whole administration of the law, jealously resenting any interference with its ancient prerogatives and preserving its own professional honor.

Thus, a close observation of professional life in England will prove instructive and suggestive to the ever-alert American. Nevertheless he will depart with a feeling that, while at home there is room for progress, yet, upon the whole, the old profession in the New World well maintains its proud position.

INDEX

INDEX

Absence of "leader" in trial, 32
Accident cases, "tender of damages" in, 122
Admiralty, Probate, Divorce and Admiralty
  Division of High Court, 93
  Trial, 104
Advocates, solicitors as, 174
"Agency business" of solicitors, 169
American law books in Middle Temple library, 14
  Members of English Bar, 12
Appeal, Courts of, 107
  to Judicial Committee of Privy Council, 113
  to House of Lords, 111
  in criminal cases, 163
  of colonial cases, 114
Appellation of judges, 173
Appointment of judges, 96
Aromatic herbs in criminal courts, 133
Assizes, 170
"Associate" or clerk of court, 3
Attorney or solicitor, 49

Bags of barristers, 47
  of solicitors, 55
Bailey, Old, 131
"Bands" of K.C.'s dress, 40
Bar, American members of English, 12
  Calling to, 26
  Discipline of, 67
  English, size of, 37
  English, division of, 39
  Make up of, 12
  Parliamentary, 40
  Women not eligible to, 26
Barnard's Inn (Chancery), 23
Barrister, "Associate," 3
  "Blue and red" bags of, 47
  Begins by becoming "devil," 30
Barrister—*Cont.*
  Chambers of, 14
  Chancery, 40
  Common law, 40
  Desks of, 3
  Dress of, 44
  Fees of, 58
  Formerly lived in Inns, 18
  Joining circuit, 171
  "Juniors," 31
  "Leader," 4
  "Locals," 172
  Master, 117
  Member of Inns of Court, 24
  Partnerships forbidden, 61
  Practice of, 57
  Selection of, 50
  Serjeants-at-law, 23
  Training of, 25
  "Twelve Dinners" of, 25
  Upon becoming K.C., invited to join Benchers, 21
  Voices of, 6
  Wig of, 5, 45
Benchers govern Inns, 21
Black Cap, 156
Briefs, 50
Briefs, endorsed with fees, 62
Butler's livery at Old Bailey, 135

Calling to bar, 26
Cambridge students exempted, 25
Censors, 68
Chambers of barristers, 18
Chancery Bar, "Specials," 41
  Barrister of, 40
  Division of High Court, 93
  Inns, 16
  Inns formerly connected with Inns of Court, 22
  Inns, history of, 22
  Lane, 15
  Lane, Serjeants' Inn, 23
  "Leaders," 34
Chief Justice, salary of, 95

Circuits of High Court, 171
Clement's Inn (Chancery), 23
Clerk of Court or "associate," 3
Clifford's Inn (Chancery), 23
Colonial appeals, 114
Colors of bags, "blue and red" for barristers, 47
Common juries, 92
  Serjeant criminal judge, 132
  Law barrister, 39
"Consolidated regulations," 22
Contingent fees not permitted, 59
Corridors of the court, 1
Costs, 97
Council of Bar, general, 67
  of legal education prescribes course of studies for barrister, 25
Counsel in a cause, 4
County courts, jurisdiction of, 94
  procedure, 173
  judges of, 173
  salaries of judges of, 173
Court Appeal, 107
  Central Criminal (Old Bailey), 131
  Civil, 87
  Common Pleas, practice formerly limited to Sergeants-at-law, 23
  County, 94-142
  Criminal, 131
  Divisional, 113
  Enumerated, 188
  High, 88
  Police, 125
  Registrar's, 95
  Room described, 2
  Room, Criminal Court, described, 132
  Vacation of, 73
Criminal Law, 39
  Trials, 136
  Trials, appeals in, 163
  Trials, comparison with American, 164
Criminal Court, Aromatic herbs in, 133
  Central (Old Bailey), 131
  Customs in, 133
Criminal Court—*Cont.*
  Dock of, 133
  Judges of, 132
  Police, 125
  Recorder, 132
  Room described, 132

Devil may conduct trial, 32
"Devilling," 30
Dhingra's Trial, 145
Disbarment, 67
Discipline of bar, 67
  of solicitors, 67
Divisional Court, 113
Divorce, Probate and Admiralty Division of High Court, 93
Dock, in Criminal Court, 133
Dress of Barristers, 44
  of Butlers at Old Bailey, 134
  in Criminal Court, 134
  of Footmen at Old Bailey, 135
  Judges, 3
  Judges (Chancery), 93
  King's Counsel, 44
  Solicitors, 3-46

Education, Council on Legal, governs training of barristers, 25
Employers' Liability Acts, 179
English Bar, size of, 37
Entrances to court room, 1
Equity Trials in Chancery Division High Court, 93
Ethics of profession, 68
Etiquette of dress enforced, 40

Fees of Barrister, 58
  of Sir Charles Russell, 60
  of Sir Frank Lockwood, 60
  Must not be contingent, 59
  Paid by law students, 26
  of solicitors, 64
  of solicitors, sometimes divided, 170
First impressions, 1
Fleet Street—"Old Bailey," 131
Footman's livery—"Old Bailey," 135
Furnival's Inn (Chancery), 23

General Council of Bar, 67
Observations, 177
"Gentleman," defined by Sir Thomas Smith, 10
Gray's Inn, 13-15

Hearings in Police Courts, 125
Herbs used in Criminal Court, 133
High Court, of Justice, 88
Circuits of, 139
Division of, 88
House of Lords, Appeals, 111

Impressions on entering Law Courts' Building, 1
Incorporated Law Society, 27-67
Inns of Chancery, 13
Formerly connected with Inns of Court, 22
History of, 22
"Staple's," "Barnard's," "Clifford's," "Clement's," "Lyon's," "Furnival's," "Thavie's," "New Inn," "Strand," 23
Inns of Court, 13
Date of origin, 21
Government of, 21
Origin of, 21
Position of, 20
Uniformity of, 21
Inns, Gray's Inn, 13
Inner Temple, 13
Lincoln's Inn, 13
Middle Temple, 13
Serjeants', 23
Interior of barristers' chambers, 18

Journals, law, reports of, 72
Judges, 3
Actively conduct trials, 102
Appellation of, 142
Appointment of, 96
Chancery Division, robes of, 93
Formerly in holy orders, 19
Of County Courts, 173
Of County Courts, salaries of, 173
Of Criminal Courts, 132
Judges—*Cont.*
Robes of, 3
Salaries of, 63-95
Judicial Appointments, 96
Committee Privy Council, 113
"Junior" barrister "opens pleadings," 31
tries case, 32
Jury, Common and Special, 91
Only in King's Bench, 88
Qualifications of, 92
Situation and arrangement of, 3
Trials, 100

King's Bench, 88
Counsel, 4, 31
Counsel, robes of, 44
Counsel, routine of, 36
Counsel, "Taking Silk," 33-34

Law Courts Building on Strand, 1
Journals, 72
Society, Solicitors' Incorporated, 28
Lawyer's training, 9
"Leader," 4
King's Counsel, 31
List of, 42
Absence of, 32
Leading questions, 140-160
Lincoln's Inn, 13-15
Livery of Footman, Criminal Court, 135
Local Barristers, 172
Solicitors, 169
Lockwood, Sir Frank, fees of, 60
London Times, law reports of, 72
Long vacation, 73
Lord Chancellor, appointments by, 173
Salary of, 95
Lord Chief Justice, 132
Lyon's Inn (Chancery), 23

Magna Charta fixed position of courts, 20
Masters, 117
Trinity, 94

"Mess" of Circuits, 171
Middle Temple, described, 13
American law books in, 13
Models much used, 104
Murder Trial of Madar Lal Dhingra, 145

Newgate Prison, 131
New Inn (Chancery), 23
Newspapers, Law reporting in, 72
Trial of cases in, 73
Nisi Prius, sittings frequent, 105

Offices of barristers in Inns, 18
Old age pensions, 181
Old Bailey (Central Criminal Court), 131
Oxford students, exemptions of, 25

Parliamentary Bar, 40
Partnerships of barristers forbidden, 61
Pensions, old age, 181
Police courts, 125
Porter's Horn, 17
Practice of barristers, 58
before masters, 117
Rules of, 89
Preliminary hearing in Police Courts, 125
Preparation of case by solicitor, 4
"President" of Probate, Divorce and Admiralty Division, 88
Prison fever, 131
Privy Council, judicial committee of, 113
Probate, Divorce and Admiralty Division of High Court, 93
Procedure in county courts, 173
Provincial courts, 169

Reading of English law student, 25
Recorder, a criminal judge, 132
Registrars' courts, 174
Registrar, a solicitor, 175
Reports of cases, 72
Robes, Judges,' 3
of Judges' Chancery Division, 93
of King's Counsel, 44
Rules of practice, 89
Russell, Sir Charles, fees of, 60

Salaries of judges, 63-95
of Judges, County Courts, 173
of Masters, 117
Serjeants-at-law, 23
Common, a criminal judge, 132
Inn, 13-23
Inn, present use of, 23
Shakespeare, production of "Twelfth Night" in Temple, 14
Sheriffs, duties in Criminal Court, 132
"Silk," "taking of," 33
Smith, Sir Thomas, definition of "gentleman," 10
Socialistic legislation, 184
Solicitors, 49
"Agents," 169
Bags of, 55
Become registrars, 175
Develop into advocates, 174
Discipline of, 67
Dress of, 55
Fees of, 64
Have no Inn of Court, 27
Incorporated Law Society governs training of solicitors, 27
Prepare cases, 4
Sphere of, 50
Training of, 12-27
"Well," 3,
Special Juries, 92
"Specials" in the Chancery Courts, 40
List of, 42
Staple's Inn (Chancery), 23
Strand Inn (Chancery), 23
Students, training of, 25
Supreme Court of Judicature, 87

"Taking Silk," 33
Templars, Knights; use of land of, by Inns of Court, 13
Temple, Church of, 14
  Inner, 13
  Library of, 14
  Middle, 13
Tender of damages in tort cases, 122
Thavie's Inn (Chancery), 23
Trade Guilds organized, 19
Treasurer, executive officer of Inn of Court, 21
  Term of, 21
Trial, 31-74
  Absence of "Leader" in, 32
  In Admiralty, 104
Trial—*Cont.*
  Before Master, 118
  Of criminal cases, 136
"Trinity Masters," 94
"Twelfth Night," produced in Temple, 14

Vacations of courts, 74

"Weepers," 44
"White Book," 68
Wigs, 45
  Barristers' described, 5
Witness Box, situation of, 3
Witnesses, demeanor of, 6
Women, not eligible to Bar, 26
Workingmen's Compensation Acts, 179

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